

By Mr. ROBINSON of Indiana: Petition of Fort Wayne Subdivision, No. 12, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

By Mr. RUPPERT: Petition of the New York Board of Trade and Transportation, against repeal of the bankruptcy law—to the Committee on the Judiciary.

By Mr. SLAYDEN: Declaration of Samuel Moore, applicant for pension—to the Committee on Pensions.

By Mr. SNOOK: Petition of Van Wert Subdivision, No. 384, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

By Mr. STEPHENS of Texas: Petition of D. H. Nichols Subdivision, No. 299, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

Also, petition of citizens of Alvord, Tex., against religious legislation for the District of Columbia—to the Committee on the District of Columbia.

By Mr. SULLIVAN of New York: Petition of the New York City Board of Trade and Transportation, against repeal of the bankruptcy law—to the Committee on the Judiciary.

By Mr. SULLOWAY: Petition of James S. Mills et al., of Freedom, N. H., favoring equitable railway rates and parcels-post law—to the Committee on Interstate and Foreign Commerce.

By Mr. THAYER: Petition of citizens of Woodstock, Gloucester, and Worcester, Mass., against religious legislation for the District of Columbia—to the Committee on the District of Columbia.

By Mr. THOMAS of Ohio: Petition of citizens of Portage County, Ohio, favoring equitable railway rates—to the Committee on Interstate and Foreign Commerce.

By Mr. WEISSE: Petition of the Chamber of Commerce of Milwaukee, Wis., approving the Esch-Townsend bill—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Chamber of Commerce of Milwaukee, Wis., against trading or dealing in options—to the Committee on Interstate and Foreign Commerce.

By Mr. WILEY of Alabama: Petition of Montgomery (Ala.) Subdivision, No. 495, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

By Mr. YOUNG: Petition of the Detroit Board of Commerce, favoring enlarged powers for the Interstate Commerce Commission—to the Committee on Interstate and Foreign Commerce.

Also, petition of Gladstone Subdivision, No. 263, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

## SENATE.

FRIDAY, February 24, 1905.

The Senate met at 11 o'clock a. m.

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. LODGE, and by unanimous consent, the further reading was dispensed with.

The PRESIDENT pro tempore. The Journal will stand approved.

### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had agreed to the amendment of the Senate, No. 2, to the bill (H. R. 17984) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1906, and for other purposes, with an amendment, in which it requested the concurrence of the Senate; disagrees to the residue of the amendments to the bill; asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. HULL, Mr. PARKER, and Mr. SLADEN managers at the conference on the part of the House.

The message also announced that the House had passed a bill (H. R. 18809) making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes; in which it requested the concurrence of the Senate.

### ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President pro tempore:

H. R. 1860. An act for the relief of certain enlisted men of the Twentieth Regiment of New York Volunteer Infantry;

H. R. 5498. An act to provide for circuit and district courts of the United States at Albany, Ga.;

H. R. 10558. An act referring the claim of Hannah S. Crane and others to the Court of Claims; and

H. R. 18815. An act to authorize the construction of a bridge across Red River at or near Boyce, La.

### NAVAL APPROPRIATION BILL.

Mr. HALE. I should like to call up the naval appropriation bill now, and get the bill started.

The PRESIDENT pro tempore. The Senator from Maine asks unanimous consent that the Senate proceed to the consideration of the naval appropriation bill, House bill 18467.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 18467) making appropriations for the naval service for the fiscal year ending June 30, 1906, and for other purposes, which had been reported from the Committee on Naval Affairs with amendments.

Mr. HALE. I ask that the formal reading of the bill be dispensed with, and that the amendments of the committee be considered as they are reached in the reading.

The PRESIDENT pro tempore. The Senator from Maine asks that the formal reading of the bill be dispensed with, that it be read for amendment, and that the committee amendments shall first receive consideration. Is there objection? The Chair hears none, and that order is made.

Mr. LODGE. I ask the Senator from Maine to yield to me to make a report from the Committee on Rules.

The PRESIDENT pro tempore. Does the Senator from Maine intend to yield for morning business?

Mr. HALE. No; I do not, but this is a matter that ought to be put through, and it will take no time.

### FLOWERS IN THE SENATE CHAMBER.

Mr. LODGE. I report from the Committee on Rules the following resolution and ask for its present consideration. It is a unanimous report from the committee.

The resolution was read, as follows:

*Resolved*, That until further orders the Sergeant-at-Arms is instructed not to permit flowers to be brought into the Senate Chamber.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

The Senate, by unanimous consent, proceeded to consider the resolution.

Mr. SCOTT. Let it be read again.

The Secretary again read the resolution.

The PRESIDENT pro tempore. The question is on agreeing to the resolution.

The resolution was agreed to.

### NAVAL APPROPRIATION BILL.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 18467) making appropriations for the naval service for the fiscal year ending June 30, 1906, and for other purposes.

Mr. CULLOM. While the Senator is getting ready to proceed with the bill I ask leave to present some petitions.

The PRESIDENT pro tempore. The Senator from Maine declines to yield for morning business.

Mr. CULLOM. The bill does not seem to be ready yet, and I think petitions might be received.

Mr. HALE. I wish to go on for half an hour with the naval appropriation bill.

Mr. CULLOM. I merely wish to present some petitions. The PRESIDENT pro tempore. The Secretary will read the bill.

The Secretary proceeded to read the bill.

Mr. TELLER. Mr. President, I wish to know if I can get a copy of the bill?

The PRESIDENT pro tempore. The Chair has been trying to get a copy, and has not succeeded.

Mr. HALE. The bill was printed yesterday. I have several copies.

Mr. TELLER. There seem to be no copies here.

Mr. HALE. There ought to be.

Mr. McCREARY. Mr. President, we can not hear on this side of the Chamber.

The PRESIDENT pro tempore. Senators will please be in order.

Mr. TELLER. What is the request? That the bill be read for action on the committee amendments?

The PRESIDENT pro tempore. Yes.

Mr. HALE. I do not propose in this short time to take up any contested matters, but I should like to have the formal part of the bill read.

Mr. TELLER. I have no objection to that course.

Mr. HALE. I do not expect between now and 12 o'clock—

Mr. CLAY. I will ask the Senator if the bill has been printed?

Mr. HALE. It has been printed.

Mr. CLAY. I was informed that we can not get copies this morning.

Mr. HALE. I do not know what has become of them.

The PRESIDENT pro tempore. There was a mistake in the print of the bill as it was first printed, and it was sent back to the Printing Office to be corrected. The corrected bill has not been returned, but the clerks have the corrections made in the copy of the bill at the desk.

Mr. HALE. Where are the 500 copies or more that were printed?

The PRESIDENT pro tempore. The Chair is not informed.

Mr. HALE. The error in printing was only one matter of two or three lines and did not touch the body of the bill in the least degree.

Mr. MONEY. Mr. President, it is not sufficient to have simply one copy in the hands of the clerks. It is a bill with a great many details, and it is impossible to keep up with it unless each member has a copy before him. It is a bill of the very greatest interest, and I hope the Senator from Maine will not compel the Senate to consider a bill not really before it, but will wait until the amended copies, if they can be had, can be brought in.

Mr. HALE. It is a very remarkable thing if all the copies have been sent back to the Printing Office on account of a little error of no substance that I could have had cured at the desk when the place was reached, and if the consideration of the bill should be prevented to-day. It is a very absurd performance on the part of somebody, I do not know who it is. But I see the force of what the Senator says. I merely expected to go over the formal part of the bill this morning, being a little pushed because I am engaged in the consideration of other appropriation bills, and the Senator from Nevada [Mr. STEWART] and the Senator from Pennsylvania [Mr. PENROSE] kindly agreed to waive their appropriation bills in order that I might get the formal part of this bill through this morning.

Mr. MONEY. A copy of the erroneously printed bill would be sufficient, if we could get that.

Mr. CULLOM. It is not here.

Mr. MONEY. But we can not get a copy of that.

Mr. HALE. They are clearly not here.

Mr. CULLOM. The Senator from Maine only desires that the formal part of the bill shall be read, not to take up any contested part of the bill. I hope he will be allowed to do that.

Mr. HALE. That is all I ask. I do not propose to run over half an hour, because there are other things to come up. All I ask is that the reading may proceed and anything upon which there is any contest I shall reserve.

Mr. STEWART. I hope the Indian appropriation bill will come in for a while this morning.

Mr. HALE. I want the reading to proceed for only about half an hour.

Mr. PATTERSON. Could not the Senator from Maine occupy the half hour that he speaks of by such a speech as he made a year ago, and give us the details of the bill and the state of the Navy?

Mr. HALE. That will come when we reach the contested parts of the bill. I can not do that this morning. This is only the reading of the formal part to utilize the time.

Mr. DANIEL. Mr. President, I ask leave to introduce a bill and also to present an amendment to an appropriation bill.

The PRESIDENT pro tempore. What is the conclusion of the Senator from Maine?

Mr. CULLOM. I think it is understood that the Senator from Maine shall proceed with the bill as stated.

Mr. HALE. Yes; the bill can be read. I will get out of the Senator's way in twenty minutes.

Mr. DANIEL. It is necessary to the business of the Senate that a Senator should have an opportunity to offer necessary amendments to appropriation bills.

Mr. HALE. I yield to the Senator.

Mr. DANIEL. That settles it. I introduce a bill, and also an amendment.

The PRESIDENT pro tempore. The Senator from Virginia asks unanimous consent to introduce a bill and also to present an amendment. The Chair hears no objection.

[The bill and amendment appear under their appropriate headings.]

The Secretary resumed the reading of the bill. The first amendment of the Committee on Naval Affairs was, under the subhead "Bureau of Navigation," on page 8, line 8, to increase the appropriation for the salary of one librarian at the Naval War College, Rhode Island, from \$1,200 to \$1,400.

The amendment was agreed to.

The next amendment was, on page 8, line 9, to increase the total appropriation for the maintenance of the Naval War College, Rhode Island, from \$16,700 to \$16,900.

The amendment was agreed to.

The next amendment was, under the subhead "Public works, Bureau of Yards and Docks," on page 27, line 8, after the word "dollars," to insert:

Boiler shop for steam engineering, to cost completed not to exceed \$140,000, \$75,000; toward pattern shop for steam engineering, \$39,400.

In line 16, before the word "hundred," to strike out "two" and insert "four;" in the same line, before the word "thousand," to strike out "and eighty-six;" and in line 17, before the word "dollars," to insert "four hundred;" so as to make the clause read:

Navy-yard, Portsmouth, N. H.: Railroad and rolling stock, additions, \$5,000; sewer systems, extension, \$5,000; underground conduit system, to continue, \$10,000; quay walls, to extend, \$70,000; grading, to continue, \$30,000; piers and slips, to extend, \$25,000; fittings for dry dock No. 2, \$35,000; sidewalks and streets, \$5,000; boiler shop for steam engineering, to cost completed not to exceed \$140,000, \$75,000; toward pattern shop for steam engineering, \$39,400; rebuilding and extending coaling plant, \$30,000; telephone system, extension, \$1,000; naval prison, administration building (to cost \$130,000), \$70,000; in all \$400,400.

The amendment was agreed to.

The next amendment was, on page 34, line 23, to increase the total appropriation for public works from \$3,025,300 to \$3,139,700.

The amendment was agreed to.

The next amendment was, under the subhead "Bureau of Steam Engineering," on page 52, line 11, after the word "navy-yard," to strike out "Brooklyn" and insert "New York;" so as to make the clause read:

Machinery plant, navy-yard, New York, N. Y.: New and additional tools for copper, boiler, machine, and pattern shops and foundry, and for an additional portable tool house, and for a 30-foot locomotive crane, \$40,000.

The amendment was agreed to.

The next amendment was, on page 54, to insert, after line 4, the following:

That a line officer of the Navy may be detailed as assistant to the Chief of the Bureau of Steam Engineering in the Navy Department, and that such officer during such detail shall receive the highest pay of his grade, and, in case of death, resignation, absence, or sickness of the Chief of the Bureau, shall, unless otherwise directed by the President, as provided by section 179 of the Revised Statutes, perform the duties of such chief until his successor is appointed or such absence or sickness shall cease.

The amendment was agreed to.

The next amendment was, under the head of "Naval Academy," on page 54, after line 11, to insert:

Two additional professors of mathematics, to have the rank of lieutenant-commander and to be extra numbers in the list of professors of mathematics in the Navy, and to be appointed by the President.

The amendment was agreed to.

The next amendment was, on page 55, line 7, after the word "each," to insert "one clerk to the Superintendent, at \$1,000;" in line 9, after the word "dollars," to insert "one writer to the commandant of midshipmen, at \$720;" and in line 12, after the word "dollars," to insert "one clerk to the paymaster, at \$1,000;" so as to read:

One sword master, at \$1,500; one assistant, at \$1,200; and two assistants, at \$1,000 each; one instructor in gymnastics, at \$1,200; one assistant librarian, at \$1,800; one assistant librarian, at \$1,000; one secretary of the Naval Academy, at \$1,800; two clerks to the Superintendent, at \$1,200 each; one clerk to the Superintendent, at \$1,000; one clerk to the commandant of midshipmen, at \$1,200; one writer to the commandant of midshipmen, at \$720; one clerk to the paymaster, at \$1,200; one clerk to the paymaster, at \$1,000, etc.

The amendment was agreed to.

The next amendment was, in the item for pay of professors and others, Naval Academy, on page 56, line 5, after the word "bandmaster," to strike out "at \$1,200" and insert "who shall have the rank and pay of an ensign of the Navy, at \$1,400;" so as to read:

One bandmaster, who shall have the rank and pay of an ensign of the Navy, at \$1,400, etc.

The amendment was agreed to.

The next amendment was, on page 56, line 15, to increase the total appropriation for pay of professors and others, Naval Academy, from \$95,322.52 to \$98,242.52.

The amendment was agreed to.

The next amendment was, on page 58, line 23, to increase the total appropriation for the maintenance of the Naval Academy from \$345,955.96 to \$348,875.96.

The amendment was agreed to.

The next amendment was, under the subhead "Marine Corps," on page 59, line 18, after the word "bars," to insert:

And the following additional enlisted men, namely, 10 first sergeants, 67 sergeants, 142 corporals, 10 drummers, 10 trumpeters, and 1,000 privates.

And in line 23, before the word "thousand," to strike out "three hundred and eighty" and insert "five hundred and fifty;" so as to make the clause read:

Pay of noncommissioned officers, musicians, and privates, as prescribed by law; and the number of enlisted men shall be exclusive of those undergoing imprisonment with sentence of dishonorable discharge from the service at expiration of such confinement, and for the expenses of clerks of the United States Marine Corps travelling under orders; including additional compensation for enlisted men of the Marine Corps regularly detailed as gun pointers, messmen, signalmen, or holding good-conduct medals, pins, or bars, and the following additional enlisted men, namely, 10 first sergeants, 67 sergeants, 142 corporals, 10 drummers, 10 trumpeters, and 1,000 privates, \$1,550,628.

The amendment was agreed to.

The next amendment was, on page 61, line 25, to increase the total appropriation for pay of Marine Corps from \$2,158,524.28 to \$2,328,524.28.

The amendment was agreed to.

The next amendment was, on page 62, line 10, before the word "thousand," to strike out "four hundred and ninety-two" and insert "five hundred and twelve;" so as to read:

Provisions, Marine Corps: For noncommissioned officers, musicians, and privates serving ashore, for commutation of rations to enlisted men regularly detailed as clerks and messengers, for payment of board and lodging of recruiting parties, transportation of provisions, and the employment of necessary labor connected therewith, and for ice for preservation of rations, \$512,087.50; and no law shall be construed to entitle marines on shore duty to any rations, or commutation thereof, other than such as now are or may hereafter be allowed to enlisted men in the Army: *Provided*, etc.

The amendment was agreed to.

The next amendment was, on page 62, line 20, to increase the appropriation for clothing for noncommissioned officers, musicians, and privates, Marine Corps, authorized by law, from \$447,370 to \$507,370.

The amendment was agreed to.

The next amendment was, on page 63, line 24, to increase the appropriation for military stores, Marine Corps, from \$175,000 to \$185,000.

The amendment was agreed to.

The next amendment was, on page 64, line 3, to increase the appropriation for transportation and recruiting, Marine Corps, from \$121,620 to \$136,620.

The amendment was agreed to.

The next amendment was, on page 65, line 5, before the word "of," to strike out "hire" and insert "commutation;" so as to read:

Hire of quarters, Marine Corps: For hire of quarters for officers serving with troops where there are no public quarters belonging to the Government and where there are not sufficient quarters possessed by the United States to accommodate them; for commutation of quarters for enlisted men employed as clerks and messengers in the offices of the commandant, etc.

The amendment was agreed to.

The next amendment was, on page 66, line 23, to increase the appropriation for contingent expenses, Marine Corps, from \$185,000 to \$215,000.

The amendment was agreed to.

The next amendment was, on page 67, line 1, to increase the total appropriation under quartermaster, Marine Corps, from \$1,605,861.50 to \$1,740,861.50.

The amendment was agreed to.

The next amendment was, on page 67, line 3, to increase the total appropriation for the Marine Corps from \$3,764,385.78 to \$4,069,385.78.

The amendment was agreed to.

The reading of the bill was continued to the subhead "Increase of the Navy," line 16, page 67.

Mr. HALE. Mr. President, I am greatly obliged for the indulgence of the Senate. The formal part of the naval appropriation bill has been read, and I do not seek to go any further with it at present, as the Senator from Indiana [Mr. BEVERIDGE] desires to call up the matter he has in charge.

Mr. STEWART. I hope the Senate will now proceed to the consideration of the Indian appropriation bill.

#### MUSSEL SHOALS CANAL, TENNESSEE RIVER.

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of War, transmitting, in response to a resolution of the 24th ultimo, a report of the district engineer officer, Maj. H. C. Newcomer, Corps of Engineers,

together with a map and tracing, relative to the improvement of the Tennessee River at Mussel Shoals Canal; which, with the accompanying paper and map, was referred to the Committee on Commerce, and ordered to be printed.

#### PETITIONS AND MEMORIALS.

Mr. CULLOM presented memorials of sundry citizens of Bluford, Danville, Sheridan, and Ottawa, all in the State of Illinois, remonstrating against the enactment of legislation to further protect the first day of the week as a day of rest in the District of Columbia; which were referred to the Committee on the District of Columbia.

He also presented a petition of the National Wholesale Lumber Association, of New York City, praying for the enactment of legislation to enlarge the powers of the Interstate Commerce Commission; which was referred to the Committee on Interstate Commerce.

He also presented petitions of J. S. Harahan Subdivision, No. 602, of Champaign; of Egyptian Subdivision, No. 512, of East St. Louis; of Rock Island Subdivision, No. 60, of Rock Island; of Urbana Subdivision, No. 143, of Urbana; of George W. Tilton Subdivision, No. 404, of Chicago; of Lake Subdivision, No. 202, of Chicago; of John Player Subdivision, No. 458, of Chicago; of Aurora Subdivision, No. 32, of Aurora; of Monmouth Subdivision, No. 484, of Monmouth; of St. Clair Subdivision, No. 49, of East St. Louis; of Centralia Subdivision, No. 20, of Centralia; of P. H. Peck Subdivision, No. 394, of Chicago; of Decatur Subdivision, No. 155, of Decatur, and of Mount Carmel Subdivision, No. 400, of Mount Carmel, all of the Brotherhood of Locomotive Engineers, in the State of Illinois, praying for the enactment of legislation to prohibit the employment of any man as a locomotive engineer who has not had at least three years' experience as a locomotive fireman or one year's experience as a locomotive engineer; which were referred to the Committee on Interstate Commerce.

Mr. ELKINS presented a memorial of sundry citizens of Salem, W. Va., and a memorial of the Religious Liberty Bureau, of Takoma Park Station, Washington, D. C., remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which were referred to the Committee on the District of Columbia.

Mr. SIMMONS presented a petition of Guilford Division, No. 431, Order of Railway Conductors, of Greensboro, N. C., praying for the passage of the so-called "employers' liability bill;" which was referred to the Committee on Interstate Commerce.

He also presented a memorial of sundry citizens of Catawba County, N. C., remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which was referred to the Committee on the District of Columbia.

He also presented the affidavit of N. L. Freeman, of Guilford, N. C., in support of the bill S. 6942, for the relief of Martha A. Moffitt; which was referred to the Committee on Claims.

Mr. FRYE presented a petition of Kennebec Lodge, No. 343, Brotherhood of Railway Trainmen, of Kennebec, Me., praying for the passage of the so-called "employers' liability bill;" which was referred to the Committee on Interstate Commerce.

He also presented the memorial of F. J. Johnson and sundry other citizens of Maine, remonstrating against the repeal of the present oleomargarine law; which was referred to the Committee on Agriculture and Forestry.

He also presented a memorial of the Baptist Ministers' Conference of New York, remonstrating against all sectarian appropriations for the Indian Territory unless prohibition is maintained therein, and also against the granting of high license for opium in the Philippines; which was ordered to lie on the table.

#### REPORTS OF COMMITTEES.

Mr. SIMMONS. I am directed by the Committee on the District of Columbia, to whom was referred the bill (H. R. 18589) to amend an act entitled "An act to establish a code of law for the District of Columbia," to report it without amendment, and to submit a report thereon.

The PRESIDENT pro tempore. The bill will be placed on the Calendar.

Mr. SIMMONS. There is now on the Calendar a bill of the same title, being the bill (S. 6969) to amend an act entitled "An act to establish a code of law for the District of Columbia." I move that that bill be indefinitely postponed, and that the House bill just reported by me be substituted for that bill on the Calendar.

The motion was agreed to.

Mr. BEVERIDGE, from the Committee on Territories, to whom was referred the bill (S. 6383) to provide for an Alaska government board, and for other purposes, reported it with amendments, and submitted a report thereon.

Mr. OVERMAN, from the Committee on Pensions, to whom was referred the bill (H. R. 7058) granting a pension to Louisa E. Satterfield, reported it without amendment, and submitted a report thereon.

Mr. SCOTT, from the Committee on Military Affairs, to whom was referred the amendment submitted by Mr. BEVERIDGE on the 22d instant, relative to the adjustment and settlement by the accounting officers of the Treasury of the claims of the States of West Virginia, Nebraska, Kansas, Louisiana, South Carolina, etc., intended to be proposed to the general deficiency appropriation bill, reported favorably thereon, and moved that it be referred to the Committee on Appropriations, and printed; which was agreed to.

#### BILL INTRODUCED.

Mr. DANIEL introduced a bill (S. 7263) to provide for celebrating the birth of the American nation, the first permanent settlement of English-speaking people on the Western Hemisphere, by the holding of an international naval, marine, and military exposition in the vicinity of Jamestown, on the waters of Hampton Roads, in the State of Virginia; to provide for a suitable and permanent commemoration of said event, and to authorize an appropriation in aid thereof, and for other purposes; which was read twice by its title, and referred to the Select Committee on Industrial Expositions.

#### AMENDMENTS TO SUNDRY CIVIL APPROPRIATION BILL.

Mr. DANIEL submitted an amendment proposing to appropriate \$650,000 for the Jamestown Tercentennial Exposition, intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Select Committee on Industrial Expositions, and ordered to be printed.

Mr. ELKINS submitted an amendment proposing to appropriate \$20,000 to enable the Secretary of the Interior, under the supervision of the Director of the Geological Survey, to have made and completed a railroad map of the United States showing connecting lines in the Dominion of Canada and the Republic of Mexico, etc., intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

Mr. SCOTT submitted an amendment proposing to appropriate \$40,000 for the purchase of ground in the District of Columbia, included within the triangle between Sixteenth street extended and Mount Pleasant street and Kenesaw avenue, intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

Mr. FOSTER of Louisiana submitted an amendment proposing to appropriate \$5,000 for improving Sabine River, Louisiana and Texas, from its mouth to the town of Logansport, intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

He also submitted an amendment relative to increasing the appropriation for improving Bayou Teche, Louisiana, intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

Mr. McCOMAS submitted an amendment proposing to appropriate \$250,000 for improving the Patapsco River and Channel at Baltimore, Md., intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

He also submitted an amendment proposing to appropriate \$3,000 to reimburse George W. Dant for expenses incurred by him in legal proceedings growing out of the Ford Theater disaster on June 9, 1893, etc., intended to be proposed by him to the general deficiency appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

Mr. CULLOM (for Mr. HOPKINS) submitted an amendment proposing to appropriate \$200,000 for improving the Chicago River, Illinois, etc., intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

#### WITHDRAWAL OF PAPERS—ANNIE R. CHESLEY.

On motion of Mr. SCOTT, it was

Ordered, That leave be granted to withdraw from the files of the Senate the papers in the case of Annie R. Chesley, accompanying Senate bill 813, Fifty-fourth Congress, first session, copies of the same to be left in the files of the Senate, as provided by clause 2 of Rule XXX.

#### HOUSE BILL REFERRED.

H. R. 18809. An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, was read twice by its title, and referred to the Committee on Commerce.

#### MILITARY ACADEMY APPROPRIATION BILL.

The PRESIDENT pro tempore laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 17984) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1906, and for other purposes, and asking for a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. WARREN. Mr. President, I move that the Senate insist on its amendments disagreed to by the House of Representatives, and agree to the conference asked for by the House.

The motion was agreed to.

By unanimous consent, the President pro tempore was authorized to appoint the conferees on the part of the Senate; and Mr. WARREN, Mr. QUARLES, and Mr. BLACKBURN were appointed.

#### STATEHOOD BILL.

Mr. BEVERIDGE. Mr. President, I desire at this juncture to call up the motion which I made the other day for an agreement to a conference with the House of Representatives on the statehood bill and the appointment of conferees, and I call the attention of the Senator from Colorado [Mr. TELLER].

The PRESIDENT pro tempore. The Chair lays before the Senate the action of the House of Representatives on the statehood bill, which will be read.

The Secretary read as follows:

IN THE HOUSE OF REPRESENTATIVES,  
February 17, 1905.

Resolved, That the Committee on the Territories be, and hereby is, discharged from the consideration of the bill (H. R. 14749) to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States, with the Senate amendments thereto; that the said Senate amendments be, and hereby are, disagreed to by the House, and a conference asked of the Senate on the disagreeing votes of the two Houses on the said bill.

Mr. GALLINGER. Mr. President, before action is taken, I desire to occupy a single moment.

It will be recalled that when this bill was under consideration in the Senate I offered an amendment protecting the people of the contemplated new State from the sale of intoxicating liquors within the borders of the State. That amendment was adopted by a vote of 52 to 17—more than three to one. Since that time I have had a deluge of letters and telegrams from the people of that country expressing gratitude that the Senate took the action it did, and expressing the hope that, if this matter was to be settled in conference, that amendment would be retained in the Senate. I shall not weary the Senate to read any of those letters or telegrams, because I am quite willing that the bill shall go to conference. So I will content myself by saying that I trust the Senate conferees will see to it that that amendment, in its essential parts at least, is retained in the bill if the conferees come to an agreement.

I have information that the liquor interests of the country are planning to invade the Indian Territory if a new State is created, there being an interregnum between the formation of the State and the creation of a legislature that can give them some protection. A circular from a distilling firm is in my possession, in which they say that they are preparing for business, and that they propose to establish grog shops throughout that Territory.

I think it is a matter of extreme interest, not only to the Indians, not only to the people of the proposed new State, but to the good people throughout the entire country. I simply make this appeal to the conferees that they may give their earnest consideration to that matter, and, so far as is in their power, that they shall represent the sentiment of the Senate as it was expressed in that very strong vote that was cast in favor of the amendment.

Mr. STEWART. I should like to call attention, before this matter goes to conference, to the amendment made by the Senate in reference to section 15, providing a restriction upon Indian lands. I hope that will be kept out of the bill, and I call the especial attention of the conferees to it.

Mr. NELSON. That was stricken out of the bill in the Senate.

Mr. STEWART. Yes; it was stricken out in the Senate by unanimous consent of the committee.

Mr. TELLER. Mr. President, it is but ten minutes now until the other order of business of the Senate commences. I desire to take perhaps fifteen minutes on this subject, and there is not now that much time left.

I am not going to oppose the appointment of this conference committee, but I do not want to attempt to say in ten minutes what I desire. I therefore ask that this matter go over until to-morrow morning, to come up the first thing in the morning.

Mr. BAILEY. Mr. President, I think it very important that something be done in this matter at once, if anything is to be done at all; and I therefore ask unanimous consent that the order now standing shall be postponed until five minutes after 12 o'clock, so as to give the Senator from Colorado the time he desires to take.

Mr. SPOONER (to Mr. BAILEY). But we have already notified the House managers.

Mr. DANIEL. I object.

Mr. BAILEY. Mr. President, I hope that I will not be compelled to vote for the House bill, but if I must choose between voting for that bill and denying the million and a half of white American citizens in Oklahoma and the Indian Territory the right of self-government, I shall make my choice without the slightest hesitation. I will not refuse a million and a half people admission into the Union because I can not also secure the same right for 300,000 in a different place.

Mr. BATE. I do not want to say anything unjust, but I think it is very—

The PRESIDENT pro tempore. The Senator from Colorado [Mr. TELLER] has been recognized and has the floor.

Mr. BATE. Mr. President, I do not think anything has been done here that justifies the remark of the Senator from Texas [Mr. BAILEY].

Mr. TELLER. Mr. President, I have had no other idea from the beginning of this controversy but that we should have a conference committee appointed. I have had some ideas, as the Senate knows, as to the character of that committee. I had partially stated them, but I was taken off the floor before I had concluded. I wanted but a few minutes more upon that subject. However, I presume it would be useless to discuss it any further. There are, however, some things which I should like to say that probably I could not say in ten minutes, but I am going to undertake to say them. If I do not get through I shall claim the right to have the matter go over.

Mr. President, I have said repeatedly during this discussion that I was in favor of the admission of Oklahoma. I made a short speech on this question, in which I insisted that Oklahoma and the Indian Territory ought not at this time to be joined. Since that time facts have come to me and questions have been raised which I did not then know existed, which have changed my mind on this subject. I now believe the best thing that can be done for the Indian Territory to-day—for I see nothing else that can be done for it—is to unite it with Oklahoma and make one State of the two as speedily as possible.

I am willing that this conference committee shall be appointed, but I am going to insist that they shall represent the sentiment of the Senate as expressed by its vote. I have assurances that that will be done. I ought to need no assurances of that kind, Mr. President, for that is the duty of such a committee. If there should a condition arise in which the sentiment of the Senate is not properly represented by the conference committee I would then consider that I and all other Senators who represent the majority of the Senate on this question by their votes should have a right, legally and morally, without being charged with hostility to the new State or with disregarding the rights of the people down there who are demanding admission into the Union, to prevent any legislation at this session. Great as their rights are, Mr. President, they can not justly be demanded at our hands if we must perpetuate upon our people and upon other sections and other citizens the great outrage that, in my judgment, is proposed by the House bill. The Senate and the House have disagreed, and it is a fair question for conference.

Mr. BAILEY. Mr. President, if the Senator from Colorado will permit me to interrupt him, I understand the Senator from Colorado to mean—and I hope I understand him correctly—that he is ready here and now to assist in passing a bill for the admission of Oklahoma and Indian Territory, thus affording their million and a half of people the right to immediate self-government; but if it is demanded of him that he shall also vote for the annexation of Arizona to New Mexico, then he will resist the whole bill. I say to the Senator from Colorado that I will cheerfully join him in that if he will join me in trying to eliminate New Mexico and Arizona from the bill and give a million and a half of people in Oklahoma and the Indian Territory

their rights now, leaving the others to bide their rights hereafter.

Mr. TELLER. Mr. President, I have stated on the floor at least twice during this discussion that I was ready to take the position which the Senator from Texas [Mr. BAILEY] suggests. I have myself felt that it was a duty incumbent upon me to assist the people of Oklahoma and the Indian Territory in securing a State government.

I do not feel, so far as the Indian Territory is concerned, as I did in the beginning. Mr. President, after sitting in the Committee on Indian Affairs for two weeks, and after understanding thoroughly the local as well as the other conditions in that Territory, I believe to-day nothing can be better in the interests of the Indians and of the white men of that country than to get these two Territories now admitted as a State of the Union.

If we can have what ought to be the fair treatment of the other body—which I must assume we will get—the committee to be appointed will stand for the traditions of conference committees and for their rights, and then, Mr. President, we will admit the Territory of Oklahoma and Indian Territory into the Union as a State inside of twenty-four hours after we get an opportunity so to do. Certainly we will not allow this session to go by without making another State and adding another star to our flag.

If at any time in the history of our country, Mr. President, a million and a half of men have ever before asked for admission to the Union, I do not know of it, and there is no record of it. A million and a half of American citizens from every section of the United States are there begging us for statehood. Has anybody or any set of men, either here or elsewhere, the right to say that this mooted and disputed question as to the propriety of the admission of New Mexico and Arizona as one State shall be allowed to prevent us from doing justice to the people of Oklahoma and the people of Indian Territory alike?

Mr. President, I think it is an obligation resting upon us, such as never rested upon the American Congress at any other time in our history, to take these people out of the category—I will not characterize it as I am inclined to do—but a condition where a million and a half of men are being controlled by the regulations of an Executive Department.

I want to repeat, Mr. President, that I will meet, so far as I am concerned, every effort to bring Oklahoma and the Indian Territory into the Union as one State.

The PRESIDENT pro tempore. If the motion had been made and adopted to strike out all after the enacting clause of the statehood bill, and to substitute for it another, the Chair, while he has been unable to find any authority in Jefferson, in Cushing, in the Rules, or in the Senate precedents, would have felt that the control of the bill should have changed, and he would have appointed conferees accordingly; but the Chair does not see how it is reasonable, where an important portion of the bill reported remains and there have been a large number of amendments, that conferees should be appointed representing the vote on the amendments.

Every Senator here knows that the usual way of appointing conferees is for the Senator having the particular bill in charge to send the names of the conferees to the Chair, and the Chair invariably appoints them. The Chair in this case sees no reason to change that custom. The Chair said to some Senators in opposition to the bill that he should appoint as conferees the Senator from Indiana [Mr. BEVERIDGE], the Senator from Vermont [Mr. DILLINGHAM], and the Senator from Tennessee [Mr. BATE]; but the Senator from Vermont has been obliged to go to that State this morning, and the chairman of the committee has handed to the Chair the following names, which the Chair will appoint as conferees on this bill.

Mr. DANIEL. Has the motion for the appointment of conferees been agreed to, Mr. President?

The PRESIDENT pro tempore. The Chair is now informed that it has not been agreed to.

The question is on the motion made by the Senator from Indiana [Mr. BEVERIDGE], that the Senate insist upon its amendments disagreed to by the House of Representatives, agree to the conference asked for by the House, and that the Chair appoint the conferees.

Mr. MORGAN. That motion can not pass without a vote of the Senate, can it?

The PRESIDENT pro tempore. No, sir.

Mr. MORGAN. Has a vote been taken?

The PRESIDENT pro tempore. A vote has not been taken.

Mr. MORGAN. The question is then open?

The PRESIDENT pro tempore. The Chair is just putting the question to the Senate.

Mr. MORGAN. Mr. President, I have the floor, and I desire to make some observations.

IMPEACHMENT OF JUDGE CHARLES SWAYNE.

The PRESIDENT pro tempore. The hour of 12 o'clock having arrived, to which the Senate sitting as a court of impeachment adjourned, the Senator from Connecticut [Mr. PLATT] will please take the chair.

Mr. PLATT of Connecticut assumed the chair.

The PRESIDING OFFICER (Mr. PLATT of Connecticut). The Senate is now sitting in the trial of the impeachment of Charles Swayne, United States judge in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDING OFFICER. The Sergeant-at-Arms will ascertain whether the managers on the part of the House are in attendance.

The managers on the part of the House of Representatives appeared, and were conducted to the seats assigned them.

The PRESIDING OFFICER. The Sergeant-at-Arms will ascertain whether the respondent and his counsel are in attendance.

Judge Charles Swayne, accompanied by Mr. Higgins and Mr. Thurston, his counsel, entered the Chamber and took the seats assigned them.

The PRESIDING OFFICER. The Journal of the proceedings of the last trial day will be read.

The Secretary proceeded to read the Journal of the Senate sitting for the trial of impeachment of Charles Swayne, Thursday, February 23.

Mr. BACON. Mr. President, in the interest of saving time, unless there be objection on the part of some Senator, I would suggest the omission of the further reading of the Journal.

Mr. McCREARY. The Journal has been read every morning during this trial, and I hope we will not now depart from that rule.

Mr. ALLISON. It is impossible to hear the colloquy.

The PRESIDING OFFICER. The Senator from Georgia [Mr. BACON] suggested the omission of the reading of the rest of the Journal, but the Senator from Kentucky [Mr. McCREARY] thinks that the Journal ought to be read in full. The Secretary will resume the reading of the Journal.

The Secretary resumed and concluded the reading of the Journal of the Senate sitting for the trial of impeachment of Charles Swayne, Thursday, February 23.

The PRESIDING OFFICER. The Presiding Officer noticed as the Journal was being read that it was not complete as to a ruling with reference to the introduction of evidence; and the Journal Clerk will be required to correct it to make it conform to the facts, if there be no objection.

Mr. NELSON. Mr. President, I desire to call attention to the omission of one motion. After the Sergeant-at-Arms had been directed to send for the absentees, the Senator from New Hampshire [Mr. GALLINGER] moved that further proceedings under the call be dispensed with. That motion is omitted in the Journal. It ought to be inserted, following the motion I made, to which reference is made, in order to make the Journal complete.

The PRESIDING OFFICER. If that motion is not already in the Journal, the Journal will be corrected. Are the managers ready to proceed with the argument?

Mr. Manager PERKINS. Mr. President, I shall speak on one only of the articles of impeachment against Charles Swayne, and that is the question of residence. And first, Mr. President, I wish to say a word in reference to the claim made that this article does not charge an impeachable offense. It is alleged in the answer of the respondent that the sixth and seventh articles do not state an impeachable offense. My associate, Mr. OLMSTED, last night, perhaps with sufficient fullness, discussed the question of impeachable offenses, but I will add a word in reference to the article which it is my duty to discuss.

The argument made in behalf of the respondent is this: That a judge, under the precedents of the English courts, can not be impeached for any act except one done in the course of his duty as a judge; and that the sixth and seventh articles do not charge an omission of duty as a judge, but an omission of duty as an individual.

Mr. President, this can best be answered by an illustration of what is the logical and necessary result of the argument on the other side, that a judge of the United States court can not be impeached by the Senate of the United States unless for some strictly judicial act. Let us suppose that a judge commits a crime; that he forges a note; that he embezzles money. He is indicted and tried and convicted in the State courts for these crimes and sentenced to bear the punishment. Then it is sought

to remove him from office by impeachment. The judge having committed these crimes is impeached. He employs my learned friends on the other side, and they claim before the Senate then, as they claim now, that the Senate has no power to impeach a judge except for acts done as a judge. They say, and say justly, that when this judge forged a note, or embezzled money, he was not acting as a judge, but as an individual. And if the argument be just, we have this extraordinary conclusion: A judge can not be removed except by impeachment. The judge, for the crime committed in his private capacity, is serving his term in State's prison. As he marches to perform hard labor, he will once a month have the consolation of opening an envelope containing the check which will be monthly sent to him to pay his salary as a judge of the United States court. Such a result shows the absurdity of the position.

The English cases are cited, but in England, apart from the remedy by impeachment, a judge can be removed for any cause deemed sufficient by a bill of attainder. That is unknown in this country. Bills of attainder were not put in our Constitution, and the remedy by impeachment by the Senate is the sole process by which a judge can be removed.

But a word more. What offense is Judge Swayne charged with? It is that he did not reside within his district. The law could not say that Judge Swayne as an individual should reside in the northern district of Florida or anywhere else, but the law says that when he is a judge he, because he is a judge, shall reside within his district; and when he failed so to do he omitted a judicial requirement made of him just as much as if he had sold justice or made unrighteous decisions.

I shall say no more on that point, but come at once to what is the important, the great question in this case—not whether the offense is impeachable, but whether the offense was committed. It has already been suggested that a judge of the United States court is the one officer in the land who holds his office by a life tenure. He can not be removed by the people. He can not be removed by the President. Nothing but the act of God or the vote of the Senate can remove a man who holds the office of United States judge. His dignity is great; his responsibility is correspondingly great. The people who complain, the people who lack confidence in their judges, can look to the Senate and can look here alone for relief. If they can not get it here, they can not get it anywhere.

I think it is the experience of every member of this body who is a lawyer—and perhaps of many who are not lawyers—that the tendency of a community is to bear patiently with and usually to reward with approval its judges. There is no tendency to harsh criticism upon a judge as there often is upon a man in political life. The tendency of the bar is to stand by the court, to overlook minor defects and minor failings, to support the judiciary. The tendency of the entire community is to look up with a respect that sometimes is excessive to a man who holds the position of judge.

It is therefore worthy of consideration that there comes before this body, not a prosecution started by some individual, not a prosecution growing out of personal grievances, but that the people of a sovereign State, the people of the State of Florida, by, I believe, a unanimous vote of their legislature have come before this body and say that they regard Charles Swayne as an unfit man to hold the office of judge and ask that he be removed.

Now, why, under the count which I have to consider, should he be removed? In this surely every member of the Senate will agree with me: A judge is a man whose duty it is to enforce the law. He has the power and it is his duty to punish those who offend against the law. Certainly the man upon whom is thrown the great responsibility of enforcing the law should himself be the first, the most vigilant, the most earnest, the most careful and conscientious to obey the law. The criminal who is accused of having offended the law of the land should not have his case passed upon by a judge who himself neglects to obey the law of the land.

The statute in this case is very simple and very plain. The man that runs may read. It needed no one learned in the law to understand what is the requirement put upon a judge of a district court of the United States. In a statute passed by the Congress of the United States it is said:

Every district judge shall reside in the district to which he is appointed, and for offending against this provision shall be guilty of a high misdemeanor.

It needs no argument to show that this offense is impeachable. Congress by its express act has said that the judge who does not comply with this requirement shall be guilty of a high misdemeanor.

Now, the reason for that statute is perfectly plain, and it has been declared by the courts. It is that a judge may be in his district, so that litigants may conveniently, easily, economically

have recourse to the court at any time to secure the orders or the relief which it is a judge's duty to grant.

Without occupying the time of the Senate by any long legal discussion, I wish to read just a word, which will emphasize the point I make in reference to what is meant by this statute. The rule is familiar that in construing a statute courts consider the object of the statute.

In a case in Colorado, where a similar statute was passed upon in reference to a judge, the court said—and in reading a sentence from the opinion I can say much more than I could in ten minutes of my own argument:

The provision that a judge shall reside within his district manifestly was not intended for his convenience—

Mark that!

was not intended for his convenience, but for the benefit of the people whose servant he is. The object of the statute was to compel the officer to maintain his residence where litigants might expeditiously, with as little expense as possible, have access to him for the transaction of official business; and the word "residence" here means an actual as distinguished from a constructive residence.

There are abundant other cases laying down the same rule, with which I shall not weary the Senate. The word "residence" is defined in the dictionary. To take a residence a man shall go to a place and take up his abode there. That is what is required; that Judge Swayne—and you will see afterwards whether the law was complied with—should go to Florida and take up his abode there. A resident, it is said, is one who comes to a place with intent to reside there. I shall say something about Judge Swayne's intention. But the law says he shall not only come to a place with intent to reside, but in consequence of the intent shall actually reside there. That is the law; that the judge shall be actually in his district; that if he has any intent to reside there that intent shall be carried into effect, so that an actual residence shall be taken.

What are the facts? The Senate of the United States must say either that Judge Swayne was or Judge Swayne was not, from 1894 until the fall of 1900, a resident, within the meaning of this law, of the northern district of Florida. If he was a resident, if the Senate shall say as matter of fact that Judge Swayne from 1894 to 1901 was a resident of the northern district of Florida, then of course our case goes for nothing on this branch. If, on the other hand, it shall say as matter of fact that he was not a resident, then the law steps in and says that if he was not a resident during those years he was guilty of a high misdemeanor by the express wording of the statute.

Mr. President, I submit that if this was a case to be tried before a judge and jury there would not be enough evidence of Judge Swayne's actual residence within the northern district of Florida to go to the jury.

What did he do? Residence is a thing easily to be understood, and the evidence in this case is uncontradicted. We have here the record. Witness after witness testified that Judge Swayne came from 1894 to 1900 within his district only when he held court. He came there the night before; he left there the day after. He was within his district only when he held his court. How long did he hold his court? We have here the official record. The witnesses testified three or four weeks, or six weeks or eight weeks, but I have here the official record. In 1895, for instance, Judge Swayne held court in his district in all thirty-eight days, eight days in Tallahassee and thirty days in Pensacola; in 1896, thirty-one days; in 1897, only twenty-one days; in 1898, twenty-five days. If that makes a resident, any drummer who goes to a town and stays there twenty or thirty days until he has finished selling his goods is a resident and can claim the privileges of a resident.

Judge Swayne did not have his family there. He did not have his effects there. He did not have his property there. His only property was the trunk which, instead of a carpetbag, the witness said he brought with him. He brought it in and took it out. Mr. President, I can not imagine how there can be any claim that this could constitute the actual residence which is required under the law.

Let us look for a moment at the answer. The answer of the respondent says that shortly after 1894 he became a resident of his district. But no time is stated. No time is stated because no time could be stated. There is not one line of evidence in this volume by which anyone up to 1900 can point his finger on the time and say Judge Swayne then became a resident of the northern district of Florida.

But let us go a little further. The admissions of Judge Swayne were excluded when they were offered in court. We have not the benefit of his evidence in this case, though we sought to have it. But we have one or two facts proved outside to which I ask the very careful attention of the Senate. Judge Swayne says, "I regarded myself as a resident of Pensacola in 1894." We called witness after witness who said they did not

know he was a resident; that he had no indicia of residence or dwelling there. The fact that from 1894 to 1898 or 1900 Judge Swayne was a resident of Pensacola was at that time known to no man in the world except Judge Swayne himself. Locked in his bosom, and there alone, was the knowledge that Charles Swayne was a resident of Pensacola.

Now, let us see a little. We have him first stopping with Captain Northrup, and finally he goes to the Escambia Hotel. When you come to pass upon the question whether Charles Swayne from 1894 to 1898 was a resident of Pensacola and obeyed the law, or was not a resident and violated the law, let us see what Charles Swayne did. Saturday, May 28, 1898, he wrote on the hotel register, with his own hand, "Charles Swayne, St. Augustine, Fla." Now, that certainly is a very extraordinary condition of affairs. For four years, if we can believe the position of the respondent, he had been a resident of Pensacola and he did not know it. Four years after Judge Swayne had not realized the fact, or he had forgotten the fact, that he was a resident of Pensacola. For these four years, as I have said, only God and Judge Swayne knew he was a resident of Pensacola. In 1898 Judge Swayne himself had forgotten the fact. The knowledge remained only with omniscience.

The guardians of the peace at night say they sometimes find a man in such a condition that he can not tell where he lives. It is the result of a career of pleasure carried on too long and carried too far. But this case is unique. Here in broad daylight, having imbibed, I dare say, no concoction more stimulating than clear, cold ice water, Judge Swayne did not know where he lived. If the Senate of the United States finds that Judge Swayne has not violated this statute, finds that he was a resident of Pensacola, Fla., from 1894 to 1898, it discovers a fact that was unknown to Judge Swayne himself. Can such a finding be made? Would such a finding be justice, or would it be a travesty on justice?

But, Mr. President, of course Judge Swayne knew where he lived in 1898 as well as any member of the Senate knows where he lives. He was no more apt to make a mistake in that than would any member of the Senate be to make a similar mistake. The fact was that he did not want—now we come to the question of intention—to go to the northern district of Florida. First he was angry at the law. He thought it was an unfair law, and he hoped a Republican Congress would repeal it. He did not like the people because the people did not like him. He wanted to hold on to the office, but he did not want to comply with the requirement of living in the district where he must hold his office. His duty was plain. If he did not like the politics or the society or the climate of the northern district of Florida, he should have resigned his position; but he could not hold on to the emoluments of the office and at the same time refuse to comply with the requirements which the office made.

I wish to call attention for just a moment to a most pertinent question put by one of the Senators from Texas to several witnesses bearing on the question of residence.

Did Judge Swayne exercise any right in, perform any duty, or take advantage of any privilege of a resident of the State?

Mr. President, he exercised no right; he cast no vote; he paid no tax; he brought no property into the State and had no property in the State; he performed no duty resting upon a citizen. The witnesses answered this question "No;" but they did not answer it accurately. Did he exercise a right? No. Did he perform a duty dependent upon his residence? No. Did he take advantage of any privilege of a resident of the district? That is what he did. He took advantage of the privilege which said a resident of that district and only a resident of that district should be a judge of that district.

Now, what was his intention? In the first place, as I have said before—and I shall not waste my time, which is rapidly running away, by citing authorities—intention is of importance when it gives an interpretation to acts. A man does a certain thing; the intention with which he does it is to be considered; but nobody ever held that intention unaccompanied by acts amounted to anything. Can I say it is my intention to live in San Francisco and thereby make myself a resident of San Francisco? If I go there, my intention, whether I shall stay and whether I shall become a resident there, is to be considered. But I can not make myself a resident of any place by saying that it is my intention to reside there. If so, a man could be a resident of any place in the world. He would need only to say that his intention was to go to this or that place and there reside.

There has been some evidence given about what was done in reference to the renting or purchase of houses. The judge had a reasonable time to make a change when the district was changed. He was not bound to start the next morning and go to Pensacola, but he was bound to do so within a reasonable time; and no man can say that it was reasonable and that it was not

an evasion of the law for a judge to take seven long years, more than the term of a Senator of the United States, before he made up his mind what house would suit him.

You have heard the evidence as to the house he wanted—a 40-foot parlor, and Heaven knows what not—a style of house not found in Pensacola. A judge has not the right to say that he will only live in a palace or in the mansion of a Vanderbilt, or in such a house as can not be found in his district, before he will go there. He is bound to look around and to exercise reasonable good faith in going.

What did he do? Mr. Marsh, his own witness, said he made some effort in 1896 and 1899, and then for two long years he ceased the quest, because Judge Swayne's family was somewhere else. That did not exempt him from the requirement of the law to become a resident.

Let me say another word bearing on good faith. It was proved that the people of Tallahassee asked Judge Swayne to go there and live. So it was evident that there was a city in his district desirous of obtaining the privilege of his residence and doubtless glad and willing to furnish such facilities as he might require. He said he would not go. He had a right to say he would not go to Tallahassee. He said his intention was to go to Pensacola. He had a perfect right to say, "I do not want to go to Tallahassee, but I do want to go to Pensacola." But, Mr. President, he had no right in good faith to say, "I will not go to Tallahassee, because I want to go to Pensacola," and then not go to Pensacola. He had not the right in 1895, at the time of the invitation to Tallahassee, to decline that because he preferred Pensacola, and then for six long years after that not go to Pensacola.

But another thing let me call the attention of the Senate to, Mr. President, that bears certainly upon the question of Judge Swayne's good faith. He knew this law, and for seven long years, from July, 1894, to the fall of 1900, he was in no sense a resident of the northern district of Florida. If he became a resident by going there and writing his name in the hotel register, anybody can do that. Let us see, now, as bearing upon the question of good faith, the gradual change in his conduct. In 1898 he registered his name as being a resident of the other district.

Mr. Manager PALMER. St. Augustine.

Mr. Manager PERKINS. St. Augustine. Consider this when you are considering the question of Judge Swayne's good faith in actually obtaining a residence. In 1899 how does he register his name? He omits St. Augustine for the first time in the latter part of 1898 and writes, "Charles Swayne, Florida." Well, that is consistent with St. Augustine; that is consistent with Pensacola; that is consistent with anything. In the latter part of 1899, when there had been no possible change in what he did, when he had rented no house, when he stayed only for the terms of the court, for the first time he wrote his name "Charles Swayne, City," and the only proof in this case that Charles Swayne became a resident of Pensacola down to the latter part of 1900 is the fact that he wrote his name "Charles Swayne, City."

Now, Mr. President, it is for the Senate to fix the law. If a man can become a resident by saying "I am going to be a resident," "I have an internal conviction I have become a resident," and by going to a tavern and writing his name "John Doe, City," it opens a new field. In our city of New York there is a business known as "colonizing." Citizens come over from Connecticut and come over from New Jersey to the city of New York to cast their votes where they will do the most good. If it shall be established by this great tribunal that a man can come from Connecticut or New Jersey and write his name in a hotel register "John Doe, City," and say before the court "My intention is to come to New York; I regard myself as a resident of New York," and therefore become a citizen of New York, the number of votes cast in the city of New York on critical occasions will be largely augmented.

I will say just a word or two more, as I must very soon close. Some evidence has been given about Guyencourt. Witnesses were called to show that the respondent did not live in Guyencourt. We do not care whether he lived in Guyencourt or whether he did not. All that the people have to establish, to sustain, is the fact that he did not live in the northern district of Florida.

Evidence was given as to his family coming there. His wife was there, during a long period of seven years, on two or three occasions for ten days. If Judge Swayne was living in Florida certainly he was not living with his wife. The evidence shows that when he went to hold court in New Orleans and in other places there also his family visited him in the same way. He was as much a resident of New Orleans as he was a resident of Pensacola if this is to be the test.

What the law requires is the actual presence of the judge for the purpose of convenience. What Judge Swayne sought to give was a metaphysical abstraction, not his presence there for the needs of the district, but the conviction in his own mind that he would become a resident of the district so far as to hold the office.

We were not allowed to give evidence of the inconvenience of his absence, which is all right, because the statute is explicit, but let me call attention to a figure or two, as showing that the law was a reasonable law, that if the judge had been there more there would have been more work for him to do. In 1895 he held court in Pensacola thirty days, in 1896 twenty days, in 1897 twenty-two days, in 1899 forty days, in 1900 thirty-two days. But mark the difference, and I shall say a word about that before I close. He took a house in Pensacola in 1901. In that year he held court sixty-one days. There was business for Charles Swayne to do in Pensacola sixty-one days in 1901, and there was no more business in that town in 1901 than there was in 1895, except that the judge was there in 1901, and he was not there in 1895. On an average, the last three years he held court in Pensacola twice the number of days that he did in 1894, 1895, and 1896. It shows the reason of the statute, that when the judge was there the judge had work to do, and when the judge was not there the work had to be done in some other way.

Taking a period of nine years, which of course gives him the average of the three years while he was there most, Judge Swayne was in Pensacola fifty days a year holding court. Take the first seven years covered by our count, and he did not average over thirty-two or thirty-three days; and this court is asked to find that a judge who holds a court in a town for thirty-three or thirty-four or thirty-five days on an average, comes the night before and leaves the morning afterwards, becomes a resident of the district within the meaning of the statute. If so, the statute is a farce and an empty form of words.

Let us consider another thing as bearing upon the intent and good faith of the judge. During all these seven years he rented no house, he bought no house, he made no purchase. When a house was offered to him, when Tallahassee offered to him a residence, it did not suit him. When houses were offered in Pensacola, they did not suit him. He stayed no more in Pensacola; he had no more interest in Pensacola in 1900 than in 1894. But finally comes the change. The discontent that had been growing in the northern district of Florida began to grow stronger and stronger.

In the fall of 1900 Judge Swayne rented a house. It does not appear how much he stayed there. He did not rent a house with a 40-foot parlor or his other sumptuous demands; but in 1900 he was willing to rent a house.

In the spring of 1903 the resolution of the legislature of the State of Florida that Judge Charles Swayne should be impeached was passed, and within one month after that was passed he bought a house and made himself a legal resident of the district. Is that evidence of good faith? If the man who for seven long years neglects to obey the law because he thinks he can do it safely, conforms to the law within one short month when danger is coming, does that show good faith? A common criminal, a common, vulgar, ignorant criminal, pursues his calling when the road is clear, and runs to shelter when the officers of the law are hot in his pursuit. What is the difference when a man of higher position, a man of learning, omits to comply with the law for seven long years when no man pursueth and in one month complies with the law when at last against him the majesty of the law is invoked?

How long have I spoken, Mr. President?

The PRESIDING OFFICER. Forty-two minutes.

Mr. Manager PERKINS. That is already two minutes more than I desired to speak, and I shall say but a word more in closing. This body possesses great powers, and as a result is subject to great responsibilities. It is the only body by which the conduct of the judiciary of the United States, one of the estates of the land, can be judged. This case is important not only to Judge Swayne, but to the judiciary of the land. Future judges will live up or will live down to the standard which this Senate places for judicial conduct. If you say that a judge may for years disregard, disobey, evade, fail to comply with the provisions of a law because it does not suit his taste or his convenience or his comfort; if you say that when the Senate of the United States, as one of the coordinate branches of Congress, has passed a law which says that the judge shall reside within his district, and that in failing to do so he shall be guilty of a high misdemeanor, that law may be disregarded and the Senate will not call it amiss, then you will say that Judge Swayne should be acquitted of the charge that is made against him. But, if you say that

the law that binds all should bind first of all and most of all those officers who are the sworn interpreters and executors of the law, then you will say that the demand that has been made by the people of the State of Florida, by their legislature, and by all the people of the United States by their House of Representatives, should be granted, and that the respondent should no longer fill that high office which he holds.

Mr. Manager CLAYTON. Mr. President, to every man who loves his country it must be a pleasant reflection that the power of impeachment has been so infrequently invoked. This infrequency is true in regard to the judiciary, and the fact is highly creditable to the people and to the judiciary itself. It argues that the judges, as a rule, have always deported themselves in such a manner as to merit and keep the confidence of the public. It evidences the further fact that the people have a respect for the judicial branch of our Government that amounts to a reverence.

Mr. President, I am aware of the conditions now existing that render the time of the Senate so precious. I shall therefore not waste any time in a useless panegyric upon this tribunal. I wish, however, to advert briefly to some of the extraordinary powers possessed by the Senate. As a part of the legislative branch of the Government, it shares with the House the law-making power. It also shares with the executive department of the Government the treaty-making power, which is in some sort a law making power, and shares also with the Executive the appointing power. Further than this, it is clothed with the extraordinary function of sitting in an impeachment case as a court, and has the power to scrutinize and bring to the bar of judgment the judges who fail to discharge the duties incumbent upon the judiciary.

The wisdom of clothing the Senate with all these powers has been demonstrated more and more as time has gone by and as emergencies have arisen. Hasty and inconsiderate legislation proposed from other quarters is here deliberated upon and is here considered as the fathers intended all legislative enactments should be considered. The rashness of the Executive, whenever that has been manifest in the exercise of any of the powers belonging to the Executive, has received the just disapproval by this great body, and the judiciary, appointed for and during the term of good behavior, amenable not to the Executive, amenable not to the people themselves directly, can alone be rebuked or scourged from the temple of justice by the Senate. There is no power of removal lodged elsewhere.

Mr. President, I desire to call attention to the fact that repeatedly in impeachment trials before the Senate it has been asserted that civil officers can not be impeached except for the commission of indictable offenses, but it was never before this time seriously contended that a judge can not be impeached except for wrongful conduct committed strictly in the performance of an act purely judicial.

Therefore in this case we are brought to a consideration of what is an impeachable offense. The Constitution denounces impeachable offenses under the terms of "treason, bribery, and other high crimes and misdemeanors." "Other high crimes and misdemeanors" are general terms, and for their import and meaning reference may be had to English jurisprudence and parliamentary law, to the provisions of the constitutions of the several States relating to impeachments in existence prior to and at the time of the adoption of the Federal Constitution, and to the interpretation put upon the words in the debates in and by the action of the United States Senate in impeachment cases which have heretofore been tried.

In the present case the House of Representatives has charged this Judge with crimes and misdemeanors, and also contends that he has forfeited his tenure of office because he has not conformed to the good behavior required by Article III, section 1, upon which his right to hold office is predicated. The Judge is entitled to hold his office during good behavior, but not otherwise. The provision of the Constitution conversely stated would be that he shall not hold office after having been guilty of misbehavior. If I understand the contention of the counsel for the respondent here, they insist that high crimes and crimes and misdemeanors and the words "the judges both of the Supreme and inferior courts shall hold their offices during good behavior" are limited or restricted to such acts as may be committed by a judge in his purely judicial capacity. In other words, however serious the crime, the misdemeanor or misbehavior of the judge may be, if it can be said to be extra judicial, he can not be impeached. To illustrate this contention, the judge may have committed murder or burglary and be confined under a sentence in a penitentiary for any period of time, however long, but because he has not committed the murder or burglary in his capacity as judge he can not be impeached. That contention, carried out logically, might lead to the very defeat of the per-

formance of the function confided to the judicial branch of the Government.

In the History of the Constitution of the United States, by George Ticknor Curtis, in volume 2, page 260, is found this language:

The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office. Such a cause may be found in the fact that, either in the discharge of his office or aside from its functions, he has violated a law or committed what is technically denominated a crime. But a cause for removal from office may exist when no offense against positive law has been committed, as when the individual has from immorality or imbecility or maladministration become unfit to exercise the office.

In the Commentaries on the Constitution of the United States, by Roger Foster, volume 1, page 569, this statement is made:

The object of the grant of the power of impeachment was to free the Commonwealth from the danger caused by the retention of an unworthy public servant.

Again, on page 586, this statement:

The Constitution provides that "the judges, both of the Supreme and inferior courts, shall hold their office during good behavior."

This necessarily implies that they may be removed in case of bad behavior. But no means, except impeachment, is provided for their removal, and judicial misconduct is not indictable by either a statute of the United States or the common law.

Again, on page 591, this statement:

An impeachable offense may consist of treason, bribery, or a breach of official duty by malfeasance or misfeasance, including conduct such as \* \* \* an abuse or reckless exercise of a discretionary power.

In Rawles on The Constitution, page 201, in speaking of the court of impeachment, it is said:

The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or in other words, from the abuse or violation of some public trust.

In Story on The Constitution (5th edition), section 796, it is said:

Is the silence of the statute book to be deemed conclusive in favor of the party until Congress have made a legislative declaration and enumeration of the offenses which shall be deemed high crimes and misdemeanors? If so, then, as has been truly remarked (citing Rawles on The Constitution), the power of impeachment, except as to the two expressed cases, is a complete nullity and the party is wholly dispensable, however enormous may be his corruption or criminality. It will not be sufficient to say that, in the cases where any offense is punished by any statute of the United States, it may and ought to be deemed an impeachable offense. It is not every offense that by the Constitution is so impeachable. It must not only be an offense, but a high crime and misdemeanor.

The further answer to this contention may be that it is repugnant to the Constitution, which especially provides for the impeachment of a civil officer for high crimes and misdemeanors, and especially provides that the judge shall hold his office during good behavior.

Again, it is repugnant to the spirit and genius of our institutions; and, if it were correct, it would be to throw around the judge, as a civil officer, a protection not afforded any other officer under the Government. It is also repugnant to the precedents in impeachment trials before the Senate, to the precedents in impeachment trials in the different States that had similar provisions in their constitutions and had had impeachment trials before the adoption of the Federal Constitution.

Any civil officer can be impeached. The President of the United States can be impeached. The removal from office can be had in respect to any officer under the Government, and it would be anomaly to say that in a free representative Government the people are deprived of the power and the right to remove from office an unworthy officer. If it be true that a judge can not be impeached except for what he may have done strictly in his capacity as judge, then this extraordinary protection is afforded to him: He is put upon a pedestal by himself; he is raised above the military, because they can be tried and gotten rid of; he is raised above the Executive, for he can be tried by impeachment and removed from office; he is raised above the members of the Senate and the Members of the House of Representatives, for they may be expelled upon a two-thirds vote of the members of their respective bodies. I say it would be anomaly. So far as the power of getting rid of an unworthy official is concerned, if that contention be correct it would be a hiatus in the power of government.

Did the fathers intend that it should ever come to pass that an unworthy officer, although a judge, guilty of murder or burglary or any other disgraceful crime which brings his high position into disrepute, can wrap a mantle of protection around him and say, "Although I am guilty of an infamous crime, I did not commit it in my judicial capacity, and therefore, convicted felon though I am, I can continue to be judge and to draw the emoluments of that high office?" I do not believe that this contention has ever been made in any of the cases heretofore presented to the Senate.

In Judge Pickering's case it will be remembered that he was accused of drunkenness. He was also accused of releasing a ship which had been libeled without requiring bond. It might be argued that he did not get drunk in his official capacity; and yet the Senate in that case did impeach him and remove him from office, and that was one of the charges.

In the case of Judge Humphreys, the other judge who was convicted and removed from office, the charge was that he had made secession speeches and that he had acted as a judge of a Confederate court. Certainly he did not make secession speeches in his capacity as a judge of the United States court; it was not done in the trial of any cause before him. He did that in his individual capacity, and yet the Senate did vote to convict him, and did remove him from office, because, among other things, he had made these speeches and had held and exercised the office of a Confederate judge during the civil war.

I have here Foster on the Constitution. I will not tax the patience of the Senate by reading it; but, availing myself of the privilege heretofore referred to, I shall ask to have inserted in the RECORD that portion of the text which I have marked.

The PRESIDING OFFICER. Without objection, the matter referred to will be so inserted in the RECORD.

The extract referred to is as follows:

The only difficulty arises in the construction of the term, "other high crimes and misdemeanors." As to this, four theories have been proposed: That, except treason or bribery, no offense is impeachable which is not declared by a statute of the United States to be a crime subject to indictment. That no offense is impeachable which is not subject to indictment by such a statute or by the common law. That all offenses are impeachable which were so by that branch of the common law known as the "law of Parliament." And that the House and Senate have the discretionary power to remove and stigmatize by perpetual disqualification an officer subject to impeachment for any cause that to them seems fit. The position that, except treason or bribery, no offense is impeachable which is not indictable by law was maintained by the counsel for the respondents on the trials of Chase and Johnson.

The first two theories are impracticable in their operation, inconsistent with other language of the Constitution, and overruled by precedents. If no crime, save treason and bribery, not forbidden by a statute of the United States, will support an impeachment, then almost every kind of official corruption or oppression must go unpunished. Suppose the Chief Justice of the United States were convicted in a State court of a felony or misdemeanor, must he remain in office unimpeached and hold court in a State prison?

The term "high crimes and misdemeanors" has no significance in the common law concerning crimes subject to indictment. It can be found only in the law of Parliament, and is the technical term which was used by the Commons at the bar of the Lords for centuries before the existence of the United States.

The Constitution provides that—

"The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior."

This necessarily implies that they may be removed in case of bad behavior. But no means except impeachment is provided for their removal, and judicial misconduct is not indictable by either a statute of the United States or the common law.

In 1803 Pickering, a district judge of the United States, was convicted on impeachment for his official action in surrendering to the claimant, without requiring the statutory bond, a vessel libeled by the United States, for refusing to allow an appeal from this order, and for drunkenness and profane language on the bench.

None of these offenses was indictable by the common law or by statute.

Humphreys, a district judge of the United States, was convicted on impeachment, not only for treason, but also for refusing to hold court, for holding office under the Confederate States, and for imprisoning citizens for expressing their sympathy with the Union. The managers of the House of Representatives who opened the case admitted that none of these offenses except the treason was indictable.

Some advocates have gone so far as to maintain by a misapplication of a term of the common law that the proceedings on an impeachment are not a trial, but a so-called "inquest of office," and that the House and Senate may thus remove an officer for any reason that they approve. That Congress has the power to do so may be admitted. For it is not likely that any court would hold void collaterally a judgment on an impeachment where the Senate had jurisdiction over the person of the condemned. And undoubtedly a court of impeachment has the jurisdiction to determine what constitutes an impeachable offense. But the judgments of the Senate of the United States in the cases of Chase and Peck, as well as those of the State senates in the different cases which have been before them, have established the rule that no officer should be impeached for any act that does not have at least the characteristics of a crime. And public opinion must be irremediably debauched by party spirit before it will sanction any other course.

Impeachable offenses are those which were the subject of impeachment by the practice in Parliament before the Declaration of Independence, except in so far as that practice is repugnant to the language of the Constitution and the spirit of American institutions. An examination of the English precedents will show that, although private citizens as well as public officers have been impeached, no article has been presented or sustained which did not charge either misconduct in office or some offense which was injurious to the welfare of the state at large.

In this class of cases, which rests so much in the discretion of the Senate, the writer would be rash who were to attempt to prescribe the limits of its jurisdiction in this respect.

An impeachable offense may consist of treason, bribery, or a breach of official duty by malfeasance or misfeasance, including conduct such as drunkenness, when habitual or in the performance of official duties, gross indecency, and profanity, obscenity, or other language used in the discharge of an official function which tends to bring the office into disrepute, or an abuse or reckless exercise of a discretionary power, as well as a breach or omission of an official duty imposed by statute or common law; or a public speech when off duty which encourages insur-

rection. It does not consist in an error in judgment made in good faith in the decision of a doubtful question of law, except, perhaps, in the violation of the Constitution.

Mr. Manager CLAYTON. But, Mr. President, it is not necessary to dwell on the authority of the Senate to say what constitutes an impeachable offense. Here Judge Swayne is charged with offenses of commission and omission, all under color of his office. He presented false accounts as judge; he failed as judge to reside in his district, and he committed the other offenses charged as judge.

Mr. President, I do not desire to dwell longer upon any preliminary phase of this case. I want to come immediately to the case of contempt charged against Belden and Davis. Prior to the trial of the Peck case in 1831 the judges of the United States courts had held—and it was asserted in the argument of counsel for Judge Peck in that case—that the judges of the Federal courts were clothed with inherent power to determine and punish contempts; that their power—I believe the language of one of the counsel in that case was—so far as saying what should constitute a contempt was plenary; that they had as wide discretion and as full power as the English judges had, or as the judges in the different States possessed where the common law obtained. The Senate seemed to have concluded in that case that this doctrine of inherent power in that regard was correctly applied to the Federal courts; and although Judge Peck had imprisoned a lawyer for publishing a criticism of his opinion—and it was conceded, I think, by impartial men to have been a just and fair criticism—although he had put this man in jail, treating that as a contempt of his court and for that offense had imprisoned him, yet that, the power of the court in that regard being unlimited, the discretion of the Federal judiciary being as wide as that of the English judiciary or as that of State judiciary, he could not be impeached for that offense.

That gave rise to the legislation under which Judge Swayne imposed a fine upon and deprived Belden and Davis of their liberty. I will not stop here to comment upon the severity of that punishment. It was an unlawful double punishment and out of all proportion to what they were charged with having done. But he punished them under this legislation and had no authority whatever under any other provision of law.

Following the Peck case, and after the judgment of acquittal had been rendered, Mr. Buchanan, who was then chairman of the Judiciary Committee of the House of Representatives, reported to the House the bill which embraces this law, and it passed there and also passed the Senate. It can be found in the back of the bound volume of the Trial of Judge Peck. It is there in the original text with the notation, the substance of which I have just recited. It is entitled "An act declaratory of the law concerning contempts of court," and provides:

SEC. 1. That the power of the several courts of the United States to issue attachments and inflict summary punishment for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in the official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts.

That section in this act is brought forward and can now be found in section 725 of the Revised Statutes.

The second section of this statute provides:

SEC. 2. That if any person or persons shall corruptly, or by threats or force, endeavor to influence, intimidate, or impede any juror, witness, or officer, in any court of the United States, in the discharge of his duty, or shall corruptly, or by threats or force, obstruct, or impede, or endeavor to obstruct or impede the due administration of justice therein, every person or persons so offending shall be liable to prosecution therefor by indictment, and shall, on conviction thereof, be punished by fine not exceeding \$500 or by imprisonment not exceeding three months, or both, according to the nature and aggravation of the offense.

That section is brought forward into the Revised Statutes, and may be found in section 5399.

The first section of this act is the law under which Judge Swayne proceeded against Belden and Davis, as I have stated. The second section, according to the view of the managers, is the law under which O'Neal should have been punished. O'Neal did not commit an act denounced in the first section of this statute or in section 725 of the Revised Statutes. He was not an officer of the court and he was not resisting or disobeying any process of the court. There the act was not committed in the presence of the court; it was not so near thereto as to obstruct the due administration of justice. The court was not in session; the Judge was not in Florida. Conforming to his usual custom, he had gone elsewhere. But I shall not stop to dwell upon the O'Neal case, for one of the managers who is to follow me will do that.

I will read section 8 of the articles of impeachment. It is as follows:

ART. 8. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the twelfth day of November, anno Domini nineteen hundred and one, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of one hundred dollars upon and commit to prison for a period of ten days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

Article 9 is as follows:

ART. 9. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of ten days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office as judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

The same specifications are made in the case of Belden.

Article 9 is in the same language as article 8, except that instead of using the words "did maliciously and unlawfully adjudge guilty of a contempt of court," the words "did knowingly and unlawfully adjudge him guilty of a contempt of court," are employed.

The leading exposition of this statute, which is embraced in section 725 of the Revised Statutes, is the case of *Ex parte Robinson*. (19 Wallace.) There the statute is analyzed and construed. It is there said:

The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject they became possessed of this power. But the power has been limited and defined by the act of Congress of March 2, 1831.

The act in terms applies to all courts; whether it can be held to limit the authority of the Supreme Court, which derives its existence and powers from the Constitution, may perhaps be a matter of doubt; but that it applies to the circuit and district courts there can be no question. These courts were created by act of Congress. Their powers and duties depend upon the act calling them into existence or subsequent acts extending or limiting their jurisdiction. The act of 1831 is, therefore, to them the law specifying the cases in which summary punishment for contempts may be inflicted. It limits the power of these courts in this respect to three classes of cases: First, where there has been misbehavior of a person in the presence of the courts, or so near thereto as to obstruct the administration of justice; second, where there has been misbehavior of any officer of the courts in his official transactions; and, third, where there has been resistance or disobedience by any officer, party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the courts.

As thus seen, the power of these courts in the punishment of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to force obedience to their lawful orders, judgments, and processes.

Now, before we further consider whether Judge Swayne abused or exceeded his authority, let us ascertain what charge was made against these lawyers. The motion made by Blount and spread on the docket of the court by the direction of Judge Swayne charges that Simeon Belden, Louis Paquet, and E. T. Davis—

as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire is plaintiff and the Hon. Charles Swayne is defendant, to be issued from said court and served upon the judge of this court, to recover the possession of block 91 in the Cheveau tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then depending in this court, in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company et al. were defendants, upon the grounds:

"1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of *Mrs. Florida McGuire v. Pensacola City Company et al.* had been submitted to the court on November 5, 1901, and denied, and after the said judge had stated in open court and in the presence of the said counsel, Simeon Belden and Louis Paquet, that an allegation of the said petition that he or some member of his family were interested in or owned property in said tract was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract, because the said suit of Florida McGuire involving the title to the said tract was in litigation before him, the said judge.

"2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part of the said tract and had no reason whatever to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely unoccupied.

"3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had

overruled the motion of the said attorneys to postpone the trial of the case of *Florida McGuire v. Pensacola City Company et al.* for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

"4. That the said E. T. Davis was, before the instituting of the said suit against the said judge, cognizant of all the facts herein set forth.

Now, if you will strike out the unnecessary words, there is nothing contained in the first specification of the charge except the allegation that these attorneys after 6 o'clock on Saturday evening entered suit against this Judge in a State court. The next is, that the Judge had no interest in the property for which they sued him, and therefore there was no foundation for the suit; and again, that the Judge had previously declared to them that he had no interest. In other words, the charge was that these attorneys had sued this Judge after he had stated in open court that he was not subject to be sued. That is the substance of the rule brought against them. There is no statement in the rule that the bringing of a suit was conduct constituting misbehavior in the presence of the court. There is no allegation that it was misbehavior so near the court as to interfere with the proper administration of justice. There is no allegation in the rule anywhere that it did obstruct or interfere with the administration of justice in Judge Swayne's court. There is no charge in this rule that the bringing of this suit by these attorneys was a misbehavior on their part in their official capacity. There is not an allegation which brings the rule within the act of 1831.

The attorneys filed the following answer:

Before the Hon. Charles Swayne, judge circuit court United States, northern district of Florida.

In re matter of contempt proceedings against Simeon Belden, Louis Paquet, and E. T. Davis.

And now comes Simeon Belden and E. T. Davis, and for reasons why they should not be punished by contempt, sheweth:

First. That the grounds upon which the said contempt is based, to wit: Summons in ejectment issued from the circuit court of Escambia County, Fla., wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, that said proceedings is in the jurisdiction of the circuit court of Escambia County, Fla., and that this court is without jurisdiction thereof.

Second. That the petition to recuse referred to in said motion they had nothing to do with before this court, nor were they present on the 5th day of November, when submitted, as stated in said motion, nor present when any statement made by the judge concerning his connection with any of the property, except the statement made by said judge on November 11, after court convened and after the motion to discontinue the case of *Florida McGuire v. Pensacola City Company et al.* was made.

Third. To the second paragraph sheweth: As above stated, they heard no declaration made by the judge, referred to in said paragraph, and as for reasons to believe that he, Judge Swayne, or some member of his family was interested in block 91, Rivas tract of land named in said summons, we simply refer to the declaration made by Hon. Charles Swayne on November 11, 1901, when said motion was made by the Hon. W. A. Blount, and that after hearing said declaration, believe that there is in existence a deed to Mrs. Charles Swayne, unexecuted, and that they have no knowledge of its repudiation, and as the negotiation for the property named in said deed was one made by Mrs. Charles Swayne in her individual right, that no act of the said Hon. Charles Swayne would repudiate or render null and void any transaction made by Mrs. Charles Swayne with her own money or property.

Fourth. That E. T. Davis for himself sheweth: That this court had no jurisdiction over him in said matter of *Florida McGuire v. Pensacola City Company et al.* until he requested the court to mark his name as attorney for plaintiff on the morning of November 11, when he presented the motion to discontinue the aforesaid suit.

SIMEON BELDEN.  
E. T. DAVIS.

The answer of these attorneys was not sworn to. Neither was the charge made against them. Here is a case which is criminal in its character, and an unsworn charge is met by an unsworn denial in the nature of a demurrer. The issue was formed. The kind of contempt here charged was in its nature a criminal prosecution. It was had in the name of the United States against the parties named. It should have been conducted by the United States attorney, who was then in court, and who alone was authorized to prosecute criminal cases in behalf of the United States. The judge instructed the lawyer interested in the suit adverse to Belden-Davis was not an attorney in the case—to prepare the rule. Some criticism is made of the answer because it was not sworn to, although responsive to an unsworn statement. That was not necessary, and that objection was not raised at the trial, but the judge proceeded to hear testimony, and in great haste, without having read the statute or law under which he was acting—and proceeded with such gross recklessness that it amounted to malice—to adjudge these men guilty of a substantial contempt of his court—that is the language employed—and sentenced them to disbarment for two years, to pay a fine of \$100, and to imprisonment for ten days. Mr. Blount suggested to the judge that he should not disbar the attorneys in that proceedings. He then modified the sentence in accordance with that suggestion and they were immediately put in jail.

The judge tried the men with undue haste. He instructed the lawyer who was interested in the suit adverse to them to prepare the rule.

The object, perhaps, of that rule was to prevent McGuire and the others from having this case litigated in the Federal court. Blount and others tell you that it had been litigated in the State court repeatedly. If the defendant parties at interest could control the Federal judge, it could never be litigated in the Federal court with any hope of success. That is where they wanted to litigate it. It had been litigated in the State court.

Now, what is the result? Paquet was driven out of the suit. A rule was taken against him. Summary judgment was about to be visited upon him, and after months of avoiding that judgment he apologized to the court. He abandoned the litigation, and in the new suit Belden and Davis took it up.

Mr. Blount was irritated that this first suit should be dismissed, and I think it is a pertinent fact in the case that Davis never figured at all as a lawyer, according to the testimony, which is undisputed, until, by mere request of Paquet and as an accommodation, he took the order of dismissal.

It is passing strange if Davis had been of counsel in this case all the week and had been consulting and advising with these people that his name should have appeared to no pleading, that he should have taken no part in the case, and that Keyser and other plaintiffs who hired the attorneys say he was not in the case. Davis says he was not in the case, and that he merely got into it on Monday morning as an accommodation to Paquet to have the case dismissed.

Then, and not until then, did Davis have anything to do with the case of Florida McGuire.

How, then, was the judge authorized or warranted in holding Davis guilty of obstructing the due administration of justice. How could he charge him with any offense? I call the attention of the Senate to the fact that Judge Swayne made a sort of an omnibus judgment of conviction against these men. He did not specify what they had committed. If a spectator had dropped in here during this trial, he might have inferred from this case that Judge Swayne punished them for the newspaper publication; but that was not the charge. They were not convicted upon that. They were convicted for bringing a suit against Swayne in the State court. They, as attorneys of Judge Swayne's court, committed no offense. As attorneys of the State court they brought the suit there. They committed no act in the presence of or near Judge Swayne's court, and did not obstruct the administration of justice therein. Why did they bring that suit? They tell you they had been informed he held an interest in land in the McGuire case. They tell you that Belden and Paquet wrote to him to recuse himself; that he paid no attention to that. Davis never heard his disclaimer in the court room. Belden never received any reply to his letter to recuse himself, and when the alleged disclaimer was made was at one time away in New Orleans and at the other time sick at his hotel in Pensacola. Neither Belden nor Davis knew anything about the newspaper publication. They had nothing to do with it. The newspaper men tell you, and the handwriting shows it, that Paquet wrote it and that Pryor carried it from Paquet to the printer.

I now refer more fully to the facts in these contempt cases. The facts in the case of Belden and Davis for an alleged contempt are different in some minor particulars, as the evidence itself will reveal. In February, 1901, Messrs. Paquet and Belden, lawyers, residing at New Orleans, brought ejectment in Judge Swayne's court on behalf of Florida McGuire and others, plaintiffs, against the Pensacola City Company and others, including Messrs. Blount and Fisher, lawyers, for a tract of land sometimes called the "Gabriel Rivas" tract and sometimes called the "Cheveaux" tract.

At the spring term of the court, 1901, the case was not ready for trial. Now, Belden says that during the summer he heard that Judge Swayne had purchased lot 91 of the Rivas or Cheveaux tract, which was in litigation before him as judge of the circuit court.

Belden and Paquet addressed a letter to Judge Swayne requesting him to recuse himself, because he was a party at interest, and to notify Judge Pardee, so that he could assign a disinterested judge at the November term. Judge Swayne made no reply to the letter. On November 5, or during the week, at the fall term of the court, Judge Swayne announced that a relative of his had purchased the land, and on the following day he said from the bench that the relative he referred to yesterday or the day before was his wife, and that she had paid for it from funds from the estate of her father. Further, in substance, that the bargain for the land had not been consummated for the reason that Edgar had offered a quitclaim deed and not a war-

ranty deed. He never at any stage of the proceedings intimated or insinuated that he declined to recuse himself upon the ground that he had not negotiated for or that he did not know that block 91 was involved in litigation in his court.

The testimony shows that Watson & Co., Edgar's agents, with whom Judge Swayne negotiated the purchase of lot 91 and another lot, wrote to him at Guyencourt, July 19, 1901, that Edgar refused to give a warranty deed to this block, but gave a quitclaim deed, and that they had recently made an abstract of title to this lot, and that they would just as soon have one deed as the other. On the 21st Judge Swayne replied:

You may omit block 91 and send papers for the others along, and oblige.

Afterwards the agents wrote him:

In reply to yours of the 20th instant, we herewith inclose you new mortgage and note for you and Mrs. Swayne to sign, leaving the amount blank in both mortgage and note.

Neither Belden nor Davis knew of this correspondence between Watson & Co. and Swayne.

Before the November term of Judge Swayne's court there was a suit in the State court against Edgar for commission on the sale of this block 91 to Judge Swayne. In July, 1901, Edgar's agent had taken Judge Swayne over the tract of land and agreed upon the terms of sale. At this November term, 1901, the criminal business of the court was concluded about 5 o'clock on Saturday afternoon. Judge Swayne then took up the case of Florida McGuire and declined to recuse himself, and stated that the case would be heard on the following Monday, unless legal grounds for continuance could be shown.

Paquet, for the plaintiff, asked that the case be set for trial on the following Thursday, claiming that it was too late to summon witnesses that night, and that they could not be summoned on Sunday, and therefore the case could not be ready for trial on Monday. Judge Swayne ruled that the case would go on on Monday. Shortly after this the court adjourned for the day. Neither Belden nor Davis was present in the court at the time Judge Swayne made any of these statements. Belden was sick and was at his hotel, and Davis says he was not there. Davis was not an attorney or counsel in the case. His name had not been attached to any pleadings, his name was not on the appearance docket of the court, he was not an attorney of record, and he says he was not an attorney in the case in any wise.

Davis states that on Sunday morning after that Paquet telephoned to him that he had a telegram calling him home on account of illness in his family, and remarked upon the fact that Belden was too feeble and ill to go to the court-house the next day—Monday—and requested Davis to take an order of dismissal for him. This is, in substance, the conversation, and Davis says he told Paquet he would go to the court room next morning—Monday—on account of this request of Paquet, not because he had been an attorney in the case, and take the order of dismissal, and that, accordingly, on Monday, the day the court met, he arose in his place and got an order from Judge Swayne dismissing the case. Now, then, going back to Saturday night, Paquet drew up the papers in this action of ejectment against Judge Swayne in the State court, and had the papers all ready before Davis went to Pryor's store, where they were drawn.

The contention was, on the part of Davis and Belden, that they had the right to sue Charles Swayne for lot 91 upon the theory that he had contracted for the land with Edgar, who claimed to own it. Neither Belden nor Davis had been in court and heard Swayne's disclaimer. They knew that a suit had been brought against Edgar for commissions on account of selling the land to Swayne. Belden had heard that Judge Swayne had bought lot 91. He was wholly ignorant of Judge Swayne's disclaimer, and so was Davis. If there was any counsel for plaintiffs in the McGuire case who knew of Judge Swayne's disclaimer it was Paquet. Belden says that upon the theory that Judge Swayne had contracted for the land with Edgar and claimed to own it—Edgar had admitted that he was in possession and the contract was existing between them—that the title of the alleged owner could be tried in the State court, Swayne standing in the shoes of Edgar. That is in substance what Belden says. At the time on Saturday night when this suit against Swayne was brought it was agreed that the case of Florida McGuire against the Pensacola City Company, pending in Swayne's court, should be dismissed on Monday morning.

Pursuant to such agreement, Monday morning, at the opening of the court, Davis for the first time appeared in the case and asked for and obtained from Judge Swayne an order dismissing the suit. I have stated about the facts leading up to his appearance in the case on Monday morning. The reason that Davis made the motion was, as I have said, because

Paquet was called home on Sunday and had requested him, over the telephone, to do this.

After the order of dismissal was made—mark you, after dismissal, and not before—W. A. Blount, one of the defendants to the suit which had been dismissed, and who was an attorney in the case—the McGuire case—arose and suggested that Paquet, Belden, and Davis had been guilty of a contempt of the court by bringing the suit in the county court of Escambia County against Charles Swayne. Paquet was the man who drew the papers in the suit against Swayne and was the leading counsel in the McGuire case.

Previous to this action on the part of Blount he and Judge Swayne had a conference before the court met on Monday. Swayne called Blount up on Sunday over the telephone and asked him if he had seen a statement of an action against him in the State court published in the morning paper, and called Blount's attention to it, and they discussed it. Now, as to what conclusion was arrived at can be, perhaps, inferred from the testimony. All that they said we do not know; what they may have agreed upon or not have agreed upon we do not know.

In the unsworn statement prepared and presented to him by Blount, Judge Swayne ordered a ruling to show cause to be served on Paquet, Belden, and Davis. Paquet had gone home to New Orleans on Sunday. Davis and Belden appeared and submitted an answer purging themselves of contempt and averring their right to bring the suit against Charles Swayne.

In sentencing Belden and Davis Judge Swayne used very harsh language.

In passing judgment upon Judge Swayne in the matter of the punishment of Belden and Davis it is our duty to consider the law under which it is asserted he acted and the facts antecedent to and existing at the time of his pronouncement. It is also our duty to consider his manner and language used at the time he sentenced the alleged offenders. By this we can better judge of the reasons, the motives of Judge Swayne, and whether his conduct was a misbehavior in office. If he convicted and sentenced these men merely because of some personal grievance, real or imaginary, or because of some pique or feeling of spite, then he was guilty of seriously wrong conduct. He did use harsh language, and this tends to show his reason and motive for finding them guilty.

I haven't the time to set out the language of the testimony. I am sure that Senators will remember it, or, if necessary, read the printed record.

It is an anomaly under our free institutions that there is one sort, contempt, of a case in one tribunal, the judicial, and only one sort of a case and in only one sort of a tribunal where there is no power to review on the merits the conduct of the man making the decision. That is in a direct and what is called a "criminal contempt" proceeding before a United States judge, where jurisdiction is conceded. The courts will not go into the merits of it. If they find that the court below had jurisdiction according to the facts and the subject-matter involved, and did not exceed his jurisdiction, they will not disturb the findings on the facts. The poor miscreant who suffers by the unjust judgment of a malevolent or vicious judge can never have the merits of his case looked into. The answer is that it is a contempt proceeding, *sui generis*, and the appellate court will not inquire into it. They say simply that the judge had jurisdiction, acted within it, and that he found the facts against the prisoner, and the facts, if true, as the court below found them, which is assumed, show a contempt, and we will not review the case further.

Let me quote Rapalje on Contempts (page 198):

Every superior court of record being at common law the sole judge of contempts against its authority and dignity, it naturally results that the judgment of every such court in cases of contempt is at common law final and conclusive and not reviewable by any other tribunal (which in other cases would lawfully exercise appellate jurisdiction), either on writ of error or appeal, unless specially authorized by statute. Nor can such decisions be reviewed upon certiorari, except in a few States where, upon this writ, the question of jurisdiction may be looked into; which question, however, is most frequently and more properly raised by means of the writ of habeas corpus.

In *Hunter v. State* there is a dictum to the effect that where one is injured by such judgment his modes of redress are (1) by habeas corpus, in which a void commitment for contempt will be disregarded and the party discharged from custody; (2) by impeachment of the judges wrongfully exercising the power; (3) perhaps by civil suit against those inflicting the wrong.

In California it has been held that an appeal will lie from an order putting a party in contempt. But as a general rule an interlocutory order in these proceedings is not appealable, such an order being merely intended to bring the party before the court. In Connecticut an adjudication of contempt by a court of competent jurisdiction, where the proceeding is according to the common-law practice, is final, and can not be reviewed by a court of error. But when the question of contempt is tried upon an issue of law tendered by the party moving in the proceeding, and decided upon such an issue, the decision must be regarded as a judgment upon which a writ of error may be brought. In Maine a review may be had upon exceptions. In Michigan an appeal

will lie from an order punishing a party for a contempt for violating an injunction; for such an order is final. In Minnesota it is held that fraud of the defendant in disposing of a trust fund can not be reached and punished by proceedings for contempt in not obeying the order to pay it over to the receiver. Such proceedings can only extend to punishing the defendant for contumaciously refusing to obey the order. Therefore an appeal lies from an order committing the defendant for such contempt.

In Nebraska a judgment for contempt may be reviewed on error in the supreme court in the same manner as in criminal cases. In New York and several other States final orders punishing a party in remedial proceedings for contempt, e. g., orders imposing a fine in the nature of an indemnity to a party suffering injury by reason of the alleged contempt, are appealable. And in several States final orders or judgments in proceedings for criminal contempts are also appealable. In New York an order of the general term of the supreme court reversing an order of the special term, which adjudged a person guilty of criminal contempt of court in obstructing the execution of a warrant for arrest on a charge of crime, is not reviewable by the court of appeals. Otherwise, of an order adjudging a person guilty of criminal contempt in violating an order granted in a civil action, as it is a civil special proceeding within Code of Civil Procedure, sections 1356, 1357. Where proceedings have been commenced after September 1, 1880, to punish for contempt in not complying with a surrogate's decree made before September 1, 1880, requiring the payment of a sum of money, such proceedings, not being a continuance of the original proceedings, are subject to review on appeal.

In North Carolina, where a judge of the superior court orders the costs in a case to be taxed against the counsel as a punishment for contempt for negligence occurring in another court at a previous time an appeal lies. And where, at the instance of a party litigant, judgment of imprisonment is rendered against the adverse party for a contempt in willfully disobeying an order of court, the party aggrieved is entitled to an appeal. In Tennessee the supreme court is declared to have jurisdiction to revise the action of the chancery court in cases of contempt for violation of orders and process of the latter tribunal. In Virginia it is held that a judgment of a court imposing a fine upon an attorney for aiding his client in obstructing the execution of a decree of such court is appealable. But it is also held in that State that a contempt of court is in the nature of a criminal offense, and the proceeding for its punishment is in the nature of a criminal proceeding. The judgment in such a proceeding can be reviewed by a superior tribunal only by writ of error, and not always in that way.

And further, note this:

The Supreme Court of the United States have decided that proceeding in the court below for contempt of court is not reviewable on appeal or writ of error. (*Hayes v. Fischer*, 12 Otto, U. S., 121; *ex parte Kearney*, 7 Wheat., U. S., 38; *New Orleans v. Steamship Co.*, 20 Wall., U. S., 387.)

What is the remedy? It is impeachment where the judge knowingly and unlawfully adjudges a person guilty of a contempt of court and in such wrongful case imposes fine and imprisonment. The object is to remove the judge who would be guilty of such conduct, so that he may not offend again.

Now, on the habeas corpus proceedings by Belden and by Davis the sentence imposed by Judge Swayne was modified to the extent that they were allowed to take punishment in the alternative, either to pay the fine or to suffer the imprisonment imposed, the statute being in the alternative. It is strange that Judge Swayne and Mr. Blount should have been so hasty in taking away the personal liberty of these men that they seem not to have stopped to read the statute of 1831. They seemed not to have stopped to consider what the Supreme Court has uniformly held from the Robinson case down. They seem not to have proceeded orderly, properly, legally, understandingly, but they seem to have proceeded harshly, hastily, and vindictively.

Blount says that the case had been tried several times before, and I take it that he had become irritated over it, and Judge Swayne seems to have angered. A sentence was pronounced which was not authorized by law—two years' disbarment. Blount, apparently without having scrutinized the statute, suggested that the disbarment was without authority in such proceedings. If he had examined the statute, or if the judge had done so, the lack of power to inflict the double punishment—fine and imprisonment—would have been manifest. The judge seemed to have been ignorantly or knowingly willing to trample the law and the rights of these defendants under foot.

A judge not only ought to be the personification of integrity, of honor, of uprightness, but he ought to be an example of calmness, of patience; a man exhibiting a love of justice. He should be such a man, when he comes to try the rights of his fellow-man, as to be without passion, without emotion, without irritation. He ought to try the accused as if it was the law that had been offended, not he himself, not a mere personal grievance to be considered, but an offense against the majesty of the law.

How can it be said the conduct of Belden or Davis made either guilty of any wrongdoing in their official capacity in Judge Swayne's court? Judge Swayne said in his statement from the bench that they had a right to sue him. Of course they had a right to sue him, but he objected to the manner of suing him. If they had the right to bring that suit, how could they commit a wrong in bringing it at the nighttime or at the noonday? If they had the right to institute that suit, how does the fact that they brought it at 8 o'clock at night—and the testi-

mony shows that Paquet prepared all the papers—alter the case? Suppose they had the right to bring the suit, as Judge Swayne said they had, and that they had waited until Monday, would it have been wrong? Or if they had brought it in the noonday of Saturday, would it have been wrong?

The fact is that Judge Swayne's bosom was filled with unjudicial feelings and wrath on Monday morning on account of that publication, with which they had nothing to do.

What did they do that was a contempt of court? It did not consist in his bringing the suit. It could not have been in printing the newspaper article, because Judge Swayne did not predicate his judgment upon that. Then, tell me where and how in their official capacity they were guilty of contempt of court?

Nothing was done in the presence of the court. Nothing done so near thereto as to obstruct the administration of justice. Mr. Blount, Judge Swayne's friend, in his testimony says that the bringing of the suit would not have hindered Judge Swayne from trying the McGuire case. It could not have obstructed him. But it was some sort of indignity, more imaginary than real, that actuated the Judge.

Mr. President, the House of Representatives believes that Judge Swayne is guilty of several impeachable offenses. That under the guise and pretense of expenses for travel and attendance outside of his district he has wrongfully received several thousand dollars to which he was not entitled. That he has not resided in his district as required by positive law. That he unlawfully and malevolently punished Belden and Davis for an alleged contempt of court. That he had no right to punish O'Neal in the contempt proceedings. That he has been guilty of such misbehavior in office as to forfeit the respect and confidence of the people. And that he has violated the conditions upon which he holds his commission, and that he should be convicted and removed from the office of judge for the northern district of Florida.

Mr. Manager POWERS. Mr. President—

Mr. BAILEY. Mr. President, I think there ought to be a quorum in the Senate during the argument.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Alger	Culberson	Hansbrough	Overman
Allison	Cullom	Heyburn	Patterson
Ankeny	Depew	Kean	Penrose
Bacon	Dick	Kittredge	Perkins
Bailey	Dietrich	Latimer	Pettus
Ball	Dryden	Long	Platt, Conn.
Bard	Dubois	McComas	Platt, N. Y.
Bate	Elkins	McCreary	Quarles
Berry	Fairbanks	McCumber	Smoot
Beveridge	Foster, La.	McEnery	Spooner
Blackburn	Frye	McLaurin	Stewart
Burnham	Fulton	Mallory	Stone
Burrows	Gallinger	Millard	Taliaferro
Clark, Wyo.	Gamble	Money	Teller
Clay	Gorman	Morgan	Warren
Cockrell	Hale	Nelson	Wetmore
Crane		Newlands	

The PRESIDING OFFICER. Sixty-seven Senators have answered to their names. A quorum is present.

Mr. Manager POWERS. Mr. President, it is my purpose in the limited time allotted to me to ask the consideration of the court to the evidence in its application to the five last articles under the impeachment. These articles are known as relating or pertaining to the contempt case of Belden, Davis, and O'Neal. I noticed the other day that the learned counsel for the respondent, in opening his case, took occasion to say that the managers, he assumed, did not put any particular stress upon the article relating to the O'Neal case from the fact that the evidence and the certified records introduced in evidence were not read to the court.

You will remember, Mr. President, that when I offered that evidence I explained to the Senate that it would occupy so much time if the reading took place that I would like to have and did receive the permission of the court to introduce that evidence without first reading it. The course which I took at that time I am sure met with the approval of the Senate, and I wish to say to my distinguished friend who represents with so much ability the respondent in this case, that he never was more mistaken in his life if he believes or for a moment has assumed that the managers do not put strength and stress upon the twelfth article of impeachment.

Now, I desire that the membership of this great court should first understand the circumstances which existed when these contempt cases came up for consideration before the respondent in this case. First, I ask the court to observe the laws which

were in force at that time in relation to summary punishment for contempt.

You will find, Mr. President, upon the seventy-third page of the record which is before you the act which was passed in 1831, entitled "An act declaratory of the law concerning contempts of court." That act has just been read by my distinguished friend who has addressed the Senate, but it requires, as it will no doubt receive from the membership of this court, a careful examination; and I desire to say that it is of the utmost importance that we should consider the circumstances under which that statute was passed.

It was passed within, I think, about sixty days after the termination of the famous Peck impeachment case, the last case which can properly be called a judicial impeachment tried before the Senate of the United States.

You will remember that in that case the distinguished attorney for the respondent, William Wirt, then in the zenith of his great professional fame, urged upon the Senate that the Federal courts had the right to punish for contempt under the common law and under that broader domain known as the law which is inherent in the court for the protection of the court. The argument of the distinguished attorney so impressed the Senate that they voted an acquittal.

The moment that acquittal was voted Mr. Buchanan, the chairman of the managers who presented the case, suggested to one of the members that that question ought to be taken up at once, and I think it was Mr. Draper who introduced the resolution for an examination into the question of the power to punish for contempt, which resulted in the passage of the act to which I have referred.

I wish to call your attention to page 74 of the record, where the language used at that time in the consideration of this new contempt law appears. The distinguished Member of the House said:

I do wish to know upon what tenure the people of this country hold their liberties. \* \* \* I am not for holding my liberty for one moment at the discretion of any individual. It may be said, sir, in opposition to the resolution, that there will be difficulty in defining contempts of court. Though this may be true, we shall find no difficulty in defining what are not contempts of court.

That was the feeling on the part of Congress after that decision; and I think, Mr. President, it is fair to say that Congress reached the conclusion at that time that the Federal courts of this country were acting under an authority far too unlimited in the matter of the punishment of contempt.

That law to which I have referred was passed in 1831. It came up for interpretation for the first time in 1835, in what is known as the Poulson case, which was decided in the eastern district of Pennsylvania, the decision being rendered by Circuit Justice Baldwin. I feel very confident that if the members of this court examine that decision, they will be impressed with the ability and the careful consideration which that justice gave to the law. There is no question that the judges of the Federal courts felt, and possibly had a right to feel, that their powers in relation to contempt had been altogether too much abridged.

Permit me, Mr. President, to call your attention to the language of Justice Baldwin in the case to which I have referred. That is a case which is reported in 19 Federal Cases, and the part from which I read is on page 1207:

It would ill become any court of the United States to make a struggle to retain any summary power the exercise of which is manifestly contrary to the declared will of the legislative power. It is not like a case where the right of property or personal liberty is intended to be affected by a law, which the court would construe very strictly, to save a right granted or secured by any former law. Neither is it proper to arraign the wisdom or justice of a law to which a court is bound to submit, nor to make an effort to move in relation to a matter when there is an insuperable bar to any efficient action.

Again, the court says:

This provision is in further confirmation of the view taken of the first section.

Referring to the second section of the act of 1831:

It is a clear indication of the meaning of the law, that the misbehavior which may still be punished in a summary manner, does not refer to those acts which subject a party to an indictment.

Let me read that once more:

It is a clear indication of the meaning of the law that the misbehavior, which may still be punished in a summary manner, does not refer to those acts which subject a party to an indictment. To construe it otherwise would be to authorize accumulative punishment for the same offense. Taking the two sections in connection, the law admits of only one construction. The first alludes to that kind of misbehavior—

Meaning the first section—

which is calculated to disturb the order of the court, such as noise, tumultuous or disorderly behavior, either in or so near to it as to prevent its proceeding in the orderly dispatch of its business; not to any attempt to influence, intimidate, or impede a juror, witness, or officer in the discharge of his duty in any other manner whatever.

Again, on the same page, after a discussion of the statute, the court says:

The law—

Meaning this act—

has tied their hands.

Meaning the hands of the court.

The judges must be passive. It is not for them to be the first to set the example of disobedience to the law, or attempt to evade plain enactments; most especially not by the exercise of a forbidden jurisdiction.

That statute came up again for interpretation in the case known as *ex parte Robinson*, 19 Wallace, and Justice Field in that case laid down substantially the same interpretation that had been laid down by Justice Baldwin many years ago. He goes on to say that the limit of the power of the court is to three classes of cases under that statute, and this, you will remember, Mr. President, was a decision made by the United States Supreme Court as late as 1873. Justice Field goes on to say:

First, where there has been misbehavior of a person in the presence of the courts, or so near thereto as to obstruct the administration of justice; second, where there has been misbehavior of any officer of the courts in his official transactions, and third, where there has been disobedience or resistance by any officer, party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the courts. As thus seen, the power of these courts in the punishment of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgments, and processes.

I have cited this statute and I have gone somewhat carefully into these two decisions for the purpose of giving to this tribunal an opportunity to see the circumstances as they existed when O'Neal, referred to in the twelfth article, was brought before Judge Swayne's court.

You will remember that Mr. Blount the other day, in reply to questions which I put to him, said that he brought to the attention of this respondent the statute to which I have referred; that he read it to him; that he brought to his attention the Poulson case, which was an interpretation of that statute in 1835, and that he then brought to his attention the opinion as rendered by Justice Field in *Ex parte Robinson* in 1873, and read them to Judge Swayne, and then gave him an opportunity to examine them.

Having before us the law as it had been presented to this respondent, I now come to an examination of the evidence relating to the facts. I am going to take in the first place the last article, which is known as the O'Neal contempt case. A large amount of evidence has been introduced in support of that article. But the facts which are material to the issue are not in dispute, nor is the law ambiguous or subject to discussion.

In 1902—that is, three years ago—there lived in the city of Pensacola two men, one by the name of Greenhut and the other by the name of O'Neal. Both were directors of the American National Bank, and O'Neal was its president, and Greenhut was a member of what was known as the "finance committee" on the part of the directors.

Some time prior to the altercation, to which I shall refer later on, a man by the name of Moreno, living in Pensacola, and a friend of Greenhut's, had come to the American Bank for the purpose of obtaining a loan of \$13,000. It was a request that an acceptance which had upon its back the indorsement of Moreno should be discounted by the bank, and he offered as additional collateral to it a mortgage upon a piece of real estate standing in the name of his wife.

The finance committee, of which Greenhut was a member, examined the security and pronounced it sufficient. Mrs. Moreno executed a mortgage as security for the payment of the acceptance, gave her note, I think, in connection with it, and the acceptance was discounted. Later on Greenhut brought to the bank Moreno with an acceptance of \$1,500 bearing Greenhut's indorsement, and the bank discounted that.

Some time in the summer of 1902, I think in September, Moreno became embarrassed and filed his petition in bankruptcy in the district court for the northern district of Florida, was adjudicated a bankrupt, and Greenhut, his friend, was elected and appointed as a trustee of the bankrupt's estate.

Some time prior to this, the acceptance of \$1,500 having become due and demand having been made upon the indorser, Greenhut, to pay it, and he having failed to pay it, the bank, after a conversation, as it appears from the evidence, with Greenhut, brought a suit against him, and that suit at the time to which I shall now refer was pending in the State courts of Florida.

On the 18th day of October of the same year Greenhut, acting, as he claims, upon advice of counsel, brought a bill in equity in the State circuit court of Escambia County in Florida

to set aside this mortgage of \$13,000, and to have the property standing in the name of his wife adjudged to be the property of the husband and turned over to the bankrupt estate. That suit was brought against the American National Bank and others.

The suit, you will understand, was brought by Greenhut as trustee, and although he was present and knew that the transaction was a bona fide transaction and had been present, as it appears from the evidence, when the money was paid over, and knew that the bank had given out its money and paid it in good faith, and later on had sold or transferred this collateral to some one else, Greenhut, nevertheless, under the advice of counsel, brought this equity proceeding; the advice of counsel is a most important feature in this world, and Greenhut said he did it under the advice of counsel.

That proceeding was brought on the 18th day of October and papers were served upon the officers of that bank. Greenhut was not present when these papers were served.

On Monday, two days later—that is, October 20—while O'Neal, the president of the bank, was on his way from his house to his bank by the usual route which he traveled, he passed the store of Greenhut, this trustee in bankruptcy. Greenhut was standing on the street and talking with a man by the name of Lischkoff, and as O'Neal came along he said "Good morning" to both Greenhut and Lischkoff, whom he knew, and said to Greenhut, "When you are at leisure I should like to have a word with you." Lischkoff turned about to pass away and Greenhut said, "Well, I am at leisure now, step inside the store," and so they both went inside the store.

You will find upon a reading of the testimony of the two men—because these two parties were the only parties who had any knowledge of what took place inside, there was no eye witness to it—that when they got inside O'Neal said to Greenhut, "I see that you have brought a suit against the bank, and I should like to know what reason you have for bringing a suit of that kind. You were present. You know that that transaction was all right." "Well," said Greenhut, "I brought that under the advice of my counsel." "Well," said O'Neal, "I should have thought that you would have spoken to us about it before you brought the suit. You know when we sued you on that acceptance we talked it over with you and gave you a chance to pay it." He said, "Whatever I have done, I have done under advice of my counsel, and you go and see him." "Well," says O'Neal, "you are no gentleman." Turning to O'Neal, Greenhut says, "You are no gentleman," and Greenhut says, "I am as much of a gentleman as you are." Then O'Neal says, "If you will step outside, we will settle that question."

Now, there is no controversy over it. That is the testimony that was before the court when that case was decided. Both parties started toward the door to settle that most momentous and important question as to which was the more of a gentleman.

Now, I assume that that issue is an issue that has led to a great many personal altercations and affrays in years gone by, and that it is an issue that will lead to a great many in the future. It was that important question which led those two men to start for the door to settle it. In other words, O'Neal said: "If you will step outside we will settle it," and the invitation was accepted by Greenhut.

Now, before they got to the door they got into a fierce affray, and you will find upon that that there is a great discrepancy in the testimony. O'Neal says that while he was on his way to the door Greenhut came up behind him and dealt him a staggering blow, and that he turned around and saw Greenhut coming at him, and as he came at him again he tried to ward off the blow, and he drew a knife from his pocket, and in the controversy he stabbed, and, as I admitted the other day, seriously injured Greenhut. On the other hand, Greenhut says that while he was following him out toward the street O'Neal turned around and made a lunge at him and stabbed him before he got a chance to reach the street and to settle the controversy as to which was the more of a gentleman.

Now, that occurred on the 20th of October. It was not in the court-house of the northern district of Florida. That court was not in session. Judge Swayne was not in his district. He was hundreds and possibly a thousand miles away from his district at the time of this altercation.

The suit which the trustee had brought was not pending in Judge Swayne's court. He had not brought it under any affirmative order, mandate, or decree of Judge Swayne's court. If you will study the evidence you will find that the issue of bringing that suit had nothing whatever to do with that controversy except so far that if the suit had not been brought possibly the gentlemen would not have had the conversation—nothing more

than that. It may be that the respondent goes so far as to say that the bringing of that suit was the approximate cause of that affray, because if it had not been brought there would not have been any conversation on that point. Certainly, in order to show that that suit was the cause of the affray, it must be upon the theory that there would have been no conversation unless the suit had been brought.

Well, now, let us see what happened after that. Greenhut could not go to Judge Swayne at that time because Judge Swayne was in Guyencourt, Del., and he waited, and while he waited his wounds healed. Judge Swayne in due time returned to the district somewhere about Christmas time, or possibly in November. He came down there and opened his court, and Greenhut filed a complaint before Judge Swayne, and in that complaint he alleged that he had been assaulted because he brought that suit, and that this assault was solely—mind that—solely for the purpose of preventing him from continuing the suit.

Well, Mr. Blount—and Mr. Blount is a good lawyer, and he has the indorsement of the distinguished gentlemen who represent the respondent—Mr. Blount appeared and filed a demurrer, and it was at the time of filing the demurrer that he brought to the attention of this respondent the statutes and the decisions to which I have referred. But Judge Swayne overruled the demurrer. Then O'Neal came in and filed his answer purging himself of contempt. You will find the answer printed in the RECORD, and I trust that the court will observe that answer. If you can imagine an answer that more completely purges a man of contempt than that, you can imagine an answer better than any that has ever yet appeared in any case which has come to my attention.

In that answer O'Neal says not only that he did not intend to have any altercation or affray with Greenhut, but he further says that in that altercation he did what was necessary, and no more than was necessary, to protect his person against a stronger man than himself. More than that, he says that he never meant any contempt of the court, and that he never dreamed of it, and that nothing was more remote from his mind than the idea of committing a contempt upon the honorable district court of the district in which he resided.

Well, ordinarily a man can purge himself of contempt. If one of the members of this court, Mr. President, were to be summoned as a witness before the court and failed to appear in the morning at the time named in the summons, he would be in contempt of the court, and the court would have the right to issue an attachment.

But whenever he came in and said that he was detained, whether on account of the conveyance that he was using, or by illness, or the illness of someone in his family, and made oath to it, that would be the end—that is the "purging," so called—and the proceeding would be dismissed as against the party.

Now, this right to purge for contempt is as old as the common law. You will find that Blackstone discusses it, and he says that while it is a dangerous thing, as applied to the conscience of the individual, nevertheless it entitles him to be released, and if he has made a false oath, then that can be reached by indictment. But the purging of contempt on the part of O'Neal, complete as it was, absolute as it was, did not have the slightest effect upon Judge Swayne, and he ordered the case to proceed to trial.

I recognize, Mr. President, that this high court of impeachment at this time in the session is greatly pressed with the work of what is known as the "public business," but if any member of this court wants to read something interesting, something a little more interesting than ever yet has been published in the shape of fiction, let him read the trial which was conducted in the O'Neal case before Judge Swayne. That trial went on the evidence, all of which is printed. You will find it in the record. About one of the first things that occurred in that trial was the attempt upon the part of the prosecution to prove that Greenhut had a reputation for peace and quiet. His reputation had not been attacked up to that time, and while Mr. Blount, with all the force of his great legal attainment and ability, contended that such evidence ought not to go in, and said, "We do not propose to attack the reputation of the complainant for peace and quiet," nevertheless it went in, and they called eleven witnesses to prove that he was a man of peace and quiet.

There was not the slightest evidence that while these two men, O'Neal and Greenhut, had lived together in Pensacola under like conditions and like circumstances, O'Neal had not maintained just as good a reputation for peace and quiet as Greenhut. Nevertheless, Judge Swayne allowed evidence to be put in that some time away back in the past, in some other

country, or some other State, or some other county, where conditions were different, O'Neal was arrested for carrying a concealed weapon.

Mr. Manager PALMER. He made O'Neal testify.

Mr. Manager POWERS. He made O'Neal testify that he was convicted for carrying a concealed weapon; and furthermore, that at some time in his life he had fired a gun across a public highway, which was in violation of some by-law or ordinance.

Now, that is the way that testimony went in, and, mind you, that testimony went in against the protest of Mr. Blount, who represented the respondent.

Well, now, when that case was completed and all the evidence was in Judge Swayne delivered a somewhat lengthy opinion, and if you will read that opinion, which is published in the record, you will find that the only question before the court and the only question which he attempted to settle was whether the stabbing of Greenhut by O'Neal was justifiable. I am going, with the permission of the court, to read a short extract from that opinion for two purposes; first, to show what was in the respondent's mind at the time he sent O'Neal to jail for sixty days for having taken part in a contest as to whether he was more of a gentleman than his friend Greenhut, but also to show the manner in which justice was administered in the court at Pensacola.

Mr. Manager OLMSTED. Will you not give the page in the record?

Mr. Manager POWERS. I can not give the page at this time. I am not sure where it is in the testimony that was introduced. Possibly my friend will look it up and can state it later on.

Mr. Manager OLMSTED. The opinion begins on page 229.

Mr. Manager POWERS. On page 231 of the record Judge Swayne used the following language:

It is a recognized rule of law by everybody who knows any law that in order to justify anyone with an assault with a deadly weapon they must first retreat as far as they can get when assaulted, and when they can go no farther, if their assailant has something which is likely to endanger their life or do them great bodily harm, as I remember the language, only then are they entitled to assault anyone with a knife, pistol, or any weapon for self-protection. Otherwise, if there is an opportunity to flee, they must go, and if they do not, and stand and what is commonly called "fight," and they injure their assailant, they are responsible therefor.

And he found that this man O'Neal could have gotten away; that the door was open; that he was near the street; and that he might have gotten away; but that instead of running as fast as he could and trying to keep out of the way of Greenhut, he stopped, and when he stopped and found Greenhut after him he drew his knife and committed an unjustifiable assault.

I imagine there is something in that opinion that may go along way toward establishing a new precedent in this country on the subject of what constitutes a justifiable assault.

Well, when that case was over Judge Swayne found O'Neal guilty. I do not know what he found him guilty of. Apparently he found him guilty of an unjustifiable assault.

Mr. Manager PALMER. I want you to read the testimony that found him guilty.

Mr. SPOONER. What is the page?

Mr. Manager PALMER. On page 231. Just read that [indicating]. That is the point of the whole business.

Mr. Manager POWERS. My distinguished associate asks that I read from page 231, and, with the permission of the court, I should like to have the Secretary read the extract which is marked by the honorable manager.

The PRESIDING OFFICER. The Secretary will read.

The Secretary read as follows:

The testimony of both parties places Mr. O'Neal so that he could have leaped out of the office instantly and gotten out of Mr. Greenhut's way in case Mr. O'Neal's story is correct. He did not do so, according to his own statement, but according to his own statement says that he would not fight in the office, but if he would come into the street he would fight. But Mr. Greenhut, as I have said, contradicts Mr. O'Neal flatly, and Mr. O'Neal contradicts Mr. Greenhut flatly, and in disposing of this case the court must decide between them.

Mr. Manager OLMSTED. Now begin with the paragraph "Leaving the testimony."

The Secretary read as follows:

Leaving the testimony of the two men out of the question and looking at the reasonableness of the situation. Next, take the two testimonies. The one tells one story and the other the other. What must be done under those circumstances? No living witness testified to what he saw except the two parties. The court must dispose of the truth or falsity of those statements upon their sworn testimony and what additional light it can get, and in that connection it turns to the record and character of the two men for peace and good order and quiet.

Eight or ten or a dozen of the best citizens of Pensacola appeared and testified, or it was admitted upon the part of the respondent that they would so testify, and their testimony was waived, that Mr. Greenhut was a gentleman of quiet, peace, and good order; in truth, at this hearing no intimation was made, no attempt was made to intimate that

Mr. Greenhut had ever had a quarrel, wordy quarrel even, with any living being. On the other hand, the record of Mr. O'Neal, as shown, was not of that character. I do not care to go over it. It is not a pleasant task, and I won't review it particularly, but simply refer to it as a fact that taking the record of Mr. O'Neal on the one hand, showing his character and disposition and troubles that he had had in different places, and the utter absence of everything of that character as regards Mr. Greenhut on the other, the court is compelled, in the direct conflict of testimony between the two men, to say that it believes Mr. Greenhut's story of this controversy and to disbelieve the story told by Mr. O'Neal. So much for the reasons of the finding.

Mr. Manager POWERS. Now, Mr. President, we have substantially all the evidence material to this issue before us, and suppose we consider now under which one of the three classes of cases into which the Supreme Court has said the cases covered by the statute are susceptible of being divided this case falls. It certainly does not fall within the first class, where there has been misbehavior by a person in the presence of the court, or so near thereto as to obstruct the administration of justice, because the court at this time was not in session and the judge was not within the limits of his court.

It does not come within the second class, where there has been misbehavior by any officer of the court in the official transactions, because O'Neal was not an officer of any court. It does not come within the third class, where there has been disobedience or resistance by an officer, party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the court, because it appears that this suit which had been brought there had been brought by no affirmative mandate of that court. It had been brought under the general authority of the trustee acting, as he claims, under the advice of counsel.

You may ask, and, possibly, properly ask, "How do you account for the sending of O'Neal to prison when he did not fall within the provisions of the contempt statute?" No one will question that if he did what was charged against him in the complaint he fell within the second section of the act of 1831, and that was an attempt to obstruct the course of justice. That made it an indictable case, and I think, Mr. President, you will agree with me that as an indictable case the only way that that controversy ought to have been settled was by indictment. If it was an indictable case, then the grand jury could have indicted O'Neal, and he would have had the benefit of a trial before a jury of his peers, where he would have had an opportunity to have shown whether or not he had been guilty of an unjustifiable assault, but he was not permitted to have that trial. He was fined and sentenced to imprisonment for sixty days.

How did that leave this man O'Neal? He was sentenced for sixty days for an assault upon Greenhut. The next day he could have been indicted in the State court of Florida and punished by imprisonment for another sixty days if the finding had been the same as that made by this respondent. What would have been the result of that? He would have received two punishments for one offense; and that is what Justice Baldwin says is the strongest test by which the statute of 1831 is to be interpreted. He says that no man can be punished under that statute who has committed an indictable offense. If O'Neal did what it is claimed he did—committed an unjustifiable assault—that was an indictable offense, and does not fall within the first section of the act of 1831. If, on the other hand, he had committed an indictable offense under the second section, he could be punished under that section, and one punishment for one offense would have satisfied the law.

I say, Mr. President, and I say it advisedly, that no man can examine the evidence of that case and examine the conduct of this respondent without reaching the honest conclusion that he knowingly unlawfully punished O'Neal.

There has been some evidence that O'Neal had something to do with this agitation concerning the impeachment of the respondent. He is dead and gone now, but at the same time I say that if he had anything to do in furthering this prosecution he had a right to do it.

I now take up, for only a brief consideration, the Belden and Davis case. I am aware that there is more or less conflict of testimony concerning that case. It is conceded by the defense that Belden and Davis were illegally punished. I mean by that that sentence was imposed upon them which was not authorized by law.

It is further agreed that in the original sentence, where they were disbarred, fined, and imprisoned, the disbarment was illegal, and that they could legally be made to suffer only either a fine or an imprisonment. It is also conceded by the respondent that the two attorneys who were selected to prosecute Belden and Davis for contempt of court were the defendants in the case out of which this trouble grew—defendants in the Florida McGuire ejectment suit—and that Judge Swayne selected those

two men to act as friends of the court to prosecute these two attorneys.

I think that every member of this court, Mr. President, must be satisfied that those attorneys acted wisely when they decided to dismiss that suit. Look at the circumstances. I can only take up that case briefly. We find from evidence that it is not disputed that this case had been pending for some time in Judge Swayne's court. It was an important suit; it involved a million dollars; and it was a question whether the title to the property belonged to the defendants in that suit or to the plaintiff.

While that suit was pending in Judge Swayne's court, either knowingly or not—I do not know whether he knew or not—he was examining that land with a view of buying a portion of it. The testimony of the witness, Hooten, is that he took him over the land and said: "This is the land that is in controversy." Judge Swayne said: "Well, if I buy a piece of this land that will disqualify me from trying that case." Judge Swayne then goes up to Delaware—this conversation when he examined the land took place, I think, in June—and he enters into negotiations with Mr. Edgar, who was one of the defendants in that case. That is, the judge who was presiding over the court which was to try the case entered into negotiations with one of the defendants to purchase a part of the property that was in litigation; and he did purchase a part of it, as it turned out afterwards, for his wife.

The deed was made out and it was sent on. Some controversy arose later as to whether he was entitled to have a warranty deed or whether he was obliged to take a quitclaim deed, and the Judge decided that he would not take the property because they did not give him a warranty deed.

When the attorneys from New Orleans learned of this, what did they do? They said: "It is reported to us that the judge who is to preside over the trial of this important case is negotiating and has negotiated for the purchase of a portion of the land in dispute, and he ought not to try that suit." So they wrote him a letter asking him to recuse himself, and to send Judge Pardee or some one else and let him try the suit. Judge Swayne took no notice of that letter. There is no evidence that it was not a courteous letter.

It came from men of great standing at the bar, one of whom had been the first law officer of the State of Louisiana. Yet Judge Swayne paid not the slightest attention to that letter. So when the court comes in to try the criminal cases, up comes General Belden and Judge Paquet. They waited around there to find out whether Judge Swayne was going to recuse himself or not. There is evidence that on the outside he made the remark that he had not purchased any of that land or entered into any contract for the purchase of that land; that the contract he had entered into was in behalf of a relative. This was on Tuesday.

On Thursday he said that the relative to whom he referred was Mrs Swayne, his wife. Then he said: "I did not buy the land. I am not going to take it now, and I want this case brought before me." "Well," they said, "we have been waiting around here to see if we could get the case tried by some other judge, but if you are to try it we want a little time to get ready for it." "How much time do you want?" they were asked. They said: "Until next Thursday, in order to get our witnesses ready for trial, if we have got to try it in this court." He said: "You have got to try it on Monday." "Well," they said, "we can not do that. We can not get ready for trial by that day." Mr. Blount said he was ready, and of course whenever an attorney on one side finds that the attorneys on the other side are not ready for trial he is always ready to insist on the trial proceeding.

So the Judge turned around and said: "You get ready to try this case on Monday morning." Remember that Judge Swayne's negotiations for the purchase of this property were suspended at that time until he disposed of that case, which would settle the title to that property. That made it possible for him to take it up and go forward with his negotiations and purchase the property in behalf of his wife and in behalf of his son.

I ask any member of this great court—men who have made their reputations as trial lawyers, many of them, before they came to this Chamber—whether under those circumstances they would have gone to trial? Under the statute they had the right to dismiss that suit and pay the costs and undertake to seek their remedy in some other tribunal. They decided to do that; and I say that ninety-nine lawyers out of a hundred, under those circumstances, in view of that conduct, would have decided to do so.

So on that Saturday night they met at Pryor's store and decided to dismiss that suit and pay the costs, and then they

decided to do something else. I am not here to say that it was good taste to do it; I doubt if most of us would have done it under the circumstances; but I do say that General Belden takes the stand and says that he believed at that time that Swayne owned that land, and therefore he brought suit in the State court. Nobody questions but that they had the right to sue Judge Swayne in his individual capacity in any court outside of his own. They brought that suit against him in the State court; but the evidence is conclusive that they did not decide to bring that suit until they had decided to dismiss the suit which was pending in the circuit court.

That caused an affront to Judge Swayne, and he called up that Sunday or Saturday night some one to advise him as to what he had better do with these lawyers. He called up the attorneys and defendants in that very suit out of which this controversy grew. Then they decided to wait until Monday morning, and on Monday morning they brought Davis and Belden before the court, and, according to the testimony, in one hour they were arraigned, tried, convicted, sentenced, and locked up in the common jail of Pensacola.

There was old General Belden, who was born more than three score and ten years before in the State of Louisiana, who had been connected with the public affairs of that State for more than half a century, who had been the godfather at the cradle of the political party to which he had belonged for more than half a century, had been the speaker of the house of representatives of his State, had been the attorney-general of that great Commonwealth, sick and paralyzed, and yet he is brought before this respondent, arraigned, tried, convicted, sentenced, and locked up in a felon's cell inside of sixty minutes. Is that the due administration of law under the Federal judiciary of this country? Is that what we mean when we talk about the independence of the American judiciary?

I come from a State where we are proud of that long line of eminent jurists which the Commonwealth of Massachusetts has given to that State and to the nation. The independence of the judiciary in that State rests upon the respect in which it is held by the people of that Commonwealth. And I want to say to you, Mr. President, that the respect for the judiciary of this country will always depend upon the manner in which the members of the judiciary conduct themselves.

Suppose you acquit the respondent. If you acquit the respondent, you say by that verdict that you approve of his conduct; you send him back to his district, agitated for a decade over the way in which justice has been administered; you send him back there and give him that tremendous power which he thinks he has in matters of summary punishment for contempt of his court, and how long will it be before you have the case back to you again?

I want to say to you, Mr. President, that this power to inflict summary punishment for contempt is a most dangerous power when it is lodged in the hands of a vain or a weak or a vicious judge. Did you ever hear that it was necessary for any great jurist, in order to maintain the independence and good order of his court, to take men of the highest character and send them to jail? That does not occur with great judges. It occurs with small judges; it occurs with vain men; it occurs in those cases where men possess power to which they are not entitled and which they ought not to possess.

So far as I am concerned, Mr. President, I have no feeling of animosity toward the respondent. I believe I can say that of every one of the managers who have come here charged with the duty which we are now performing. It is a great duty; it is an important duty; but it is a disagreeable duty.

We stand as the representatives here of 80,000,000 people, who ask your careful scrutiny of this case, and ask you when you have determined upon its true merits that you shall not shrink from the performance of that high duty which the Constitution of the United States has conferred upon you and also from the confidence which a great people have reposed in you.

I trust, Mr. President, that in the consideration of this case we will forget everything except the rights which belong to the respondent and the rights which belong to the American people. With that consideration which this great high court of impeachment will give to the rights of those two classes it will define upon one side the prerogatives of courts, and upon the other side will limit and describe the liberties of the people. Having done that you will have done your duty, and we, the managers, the House of Representatives, and the American people will bow in acquiescence to whatever decision you reach.

The PRESIDING OFFICER. Who is next to address the Senate?

Mr. HIGGINS. Mr. President, I will, on behalf of the respondent.

The PRESIDING OFFICER. Mr. Higgins, on behalf of the respondent, will now address the Senate.

Mr. HIGGINS. Mr. President, I conceive it is of no slight interest or importance to the Senate that of the four learned managers who have now taken part in the presentation of the prosecution of this case three of them have devoted as much time as they have to the question whether the offenses charged in the first seven articles constitute impeachable offenses—the alleged offense or crime of the respondent of making a false claim, or obtaining money by false pretenses; of using a car belonging to a railroad company, contrary to good morals; and, third, in not obeying the statute to reside in his district. All three have united in presenting the argument of ab inconvenience—one which seldom weighs much with courts, and one which, it seems to us, after the conclusive discussion of the subject in the argument which it has been our privilege to present to the Senate on the constitutional question, is not left in the case really for discussion. That argument shows beyond peradventure that the framers of the Constitution in leaving out of the Constitution any provision for the removal of an official subject to impeachment by address did it purposely and with a view of giving stability to those who hold the offices, and especially the judges.

Mr. Dickinson—

Says Elliott in his Debates on the Constitution—

moved, as an amendment to Article XI, section 2, after the words "good behavior," the words "Provided: That they may be removed by the Executive on the application by the Senate and House of Representatives."

This was in respect of the judges.

Mr. Gerry seconded the motion. Mr. Gouverneur Morris thought it a contradiction in terms to say that the judges should hold their offices during good behavior and yet be removable without a trial. Besides, it was fundamentally wrong to subject judges to so arbitrary an authority.

Mr. Randolph opposed the motion, as weakening too much the independence of the judges.

Delaware alone voted for Mr. Dickinson's motion.

Says Judge Lawrence in a paper on this subject which he filed in the Johnson impeachment case:

Impeachment was deemed sufficiently comprehensive to cover every proper case for removal.

The first proposition was to use the words, "to be removable on impeachment and conviction for malpractice and neglect of duty." It was agreed that these expressions were too general. They were therefore stricken out.

Colonel Mason said:

Treason, as defined in the Constitution, will not reach many great and dangerous offenses. Hastings is not guilty of treason. Attempts to subvert the Constitution may not be treason as above defined.

He moved to insert after "bribery" the words "or maladministration."

Madison replied:

So vague a term will be equivalent to a tenure during the pleasure of the Senate.

Mason withdrew "maladministration" and substituted "other high crimes and misdemeanors against the State."

Mr. President, there are in the States of Pennsylvania, Delaware, South Carolina, Alabama, Arkansas, Florida, Illinois, Kentucky, Louisiana, and Texas provisions substantially the same as those contained in the constitutions of Pennsylvania and of Delaware. The constitution of the State of Pennsylvania of 1790 provides:

#### ARTICLE V.

SEC. 2. The judges of the supreme court and of the several courts of common pleas shall hold their offices during good behavior. But for any reasonable cause, which shall not be sufficient ground of impeachment, the governor may remove any of them on the address of two-thirds of each branch of the legislature.

The clause of the constitution of Delaware is similar. The Pennsylvania constitution as amended in 1838 provides:

SEC. 3. The governor and all other civil officers under this Commonwealth shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of honor, trust, or profit under the Commonwealth. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law. (Page 1561.)

So that there are in those constitutions the direct provision that power of removal by address is given as punishment for cases which by the very words of the constitution are said not to be the subject of impeachment.

An examination of the constitutions of the several States will show that there are not more than two or three State constitutions which do not contain the power of removal by address. That power was placed in the English constitution by a great

and famous historic statute—the Act of Settlement—passed early in the reign of William and Mary, or of Anne, at the time when the present dynasty of the British throne was placed upon the authority of an act of Parliament. Then it was that the provision was placed in the statute that judges should be removable by address for causes that were not the subject of impeachment. Therefore, in the face of this state of the constitutional law and of the terms and provisions of the Constitution, where is there room for an argument that that construction shall not hold because there is no other way of getting rid of judges but by impeachment?

Now, but one word more on this, and that is in respect to the case that was cited by the learned manager, Mr. OLMSTEAD, of an impeachment in Massachusetts. I call attention to the fact that the constitution of Massachusetts of 1780 makes provision for the impeachment of judges broader than the other States, or at least most of them.

ART. VIII. The senate shall be a court with full authority to hear and determine all impeachments made by the house of representatives against any officer or officers of the Commonwealth for misconduct and maladministration in their offices.

So in Massachusetts the judge who took illegal fees upon the ministerial side of his probate court was clearly impeachable under the provision of the Massachusetts constitution, which extended to ministerial functions. I shall say no more bearing upon that very important and interesting point. I do not intend to consume the time that is allotted to counsel for respondent, or of the Senate. In going over any of the ground that it has fallen to my duty to discuss in the preceding stages of this trial. I shall have something to say in reply, however, to the learned managers and in respect of some of the testimony of their witnesses as to the contempt cases; as to Davis and Belden not much more than a word.

Both Davis and Belden testified that in the court, after they were brought up for contempt, one and the other informed Judge Swayne that at the time they brought the suit against him they were not aware of the fact that he had disclaimed ownership in block 91, and therefore that there was no ground on which to recuse himself. That would imply that if they had known it they would not have taken the position they did in their answer, which was that they had brought the suit because he had stated that there was an uncanceled deed out to Mrs. Swayne for this property, and that he, Judge Swayne, did not have the power to revoke or cancel that deed, the negotiations being conducted with her own money and not with his. I call the attention of the Senate to the fact that the testimony of these witnesses is irreconcilable absolutely with the position taken in their answer, their defense, the case they were supporting before that court.

But I go further. You will read in the record, from the circuit court of appeals, which makes up the decision of that court on the habeas corpus, the seventeen different reasons of Davis and Belden why the habeas corpus should be granted and they should be discharged and the proceedings below should be set aside.

In not one of those reasons do they set forth the claim that they had brought to the attention of the Judge that they were ignorant of his disclaimer. I challenge the learned managers, or the one who is to close this case, to show here from the testimony taken before the Judiciary Committee of the House—and they can introduce it if they please—where either Davis or Belden, when they testified there, said they had informed Judge Swayne of any such thing. It is left for them when they come here and when they need it and their case needs it to make up this statement. But when they do they are met by the testimony of Mr. Blount and Mr. Marsh, the intelligent and capable clerk of the court, both of them interested in this case, and Mr. Blount concerned, that they heard no such statement. I, therefore, say that on the principle that a court gives the verdict on the weight of the evidence, the judgment of the Senate on that point, on the weight of this evidence, ought to be that the statements of these two witnesses here, Davis and Belden, can not be accepted in the face of their own record and the contradiction by disinterested witnesses.

Mr. President, it is on that case as it thus stood before that court that the learned manager who has just concluded his remarks ventured to say that Davis and Belden were in every sense justified in bringing their suit against the Judge. The learned manager undertook to plant himself upon this idea that there was an outstanding negotiation. He did not undertake to argue it. I should like his colleague, who is to conclude, to undertake to argue or show this tribunal that there was any title in Judge Swayne on which he could recuse himself—any title or any possession on which an action of ejectment could be predicated—to save the proceeding from the overwhelming condemnation of being an unfounded suit.

What is the status of any lawyer who brings an unfounded suit against the humblest person but an oppressive exercise of his office and one which ought to be treated as misbehavior in the discharge of the duties of his office? I shall not undertake to repeat what I have said before of the character of this transaction, when it was leveled at the judge without a whimper of cause and in order to affect his judicial action.

The learned manager who opened this case undertook to show that the conduct of the Judge was malicious because the sentence was outside of the law, by being fine and imprisonment, instead of fine or imprisonment, and also because of the words in which Judge Swayne delivered his judgment. I refer to that phase of the case now to call the attention of the Senate to the testimony of Mr. Blount. In disputed cases, in the search after truth, in the endeavor of a disinterested and honest judge and court to arrive at the facts, there is and ever must be infinite satisfaction in realizing that you have in one witness at least a man who because of the clearness of his intellect and the unquestioned standing and character which he bears can be relied upon in his testimony; and that you can do with Mr. Blount. I am perfectly willing to leave to the Senate, Mr. President, as the evidence and ground upon which it shall conclude as to the Judge's manner in administering this punishment and in sentencing these men to jail and to fine, the statement that Mr. Blount made.

In the face of all that testimony without comment the learned managers in one breath say they are pained and without any ill feeling toward the respondent, and just before they draw conclusions ignoring the testimony, draw conclusions unjustified by the testimony and contrary to the testimony, and seek to make up the lack of evidence and testimony by the severity of their denunciation.

We all know the respect in which the judiciary of the State of Massachusetts is always held, and we know of the respect which is always accorded to it, but I think I can ask any member of the Senate whether he thinks a judge of that State would not have visited any attorney of his court with summary punishment if he had brought an unfounded suit against the judge and pointed at it in a malevolent newspaper article which went along with it; and I care not whether Davis and Belden had any part in writing it or not. As I said before, they and Paquet were all in the combination, all bound by the same undertaking, each guilty of what the other did, and this telltale publication was a give-away and a condemnation for them all, scandalous in its character, and determining the scandalous and unfounded course in bringing the suit.

Mr. President, I now come to the O'Neal case, and I shall again ask to have read the testimony of O'Neal himself as to the reconforte. It will take but a moment to have it done.

THE PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read as follows:

Q. Didn't you tell him on that occasion that the trouble emanated from the suit that was commenced by Mr. Greenhut, as trustee, against Scarritt Moreno, the American National Bank, and others on the preceding Saturday?—A. I do not think so. I think I told him—I told him that the trouble was caused by the bankruptcy of Moreno, Baars, or something of that kind.

Q. Mr. O'Neal, have you ever been convicted of any crime?

A. I was convicted once for shooting across the public road out in Covington County.

Q. At Andalusia?—A. Yes, sir.

Q. Mr. Stallings prosecuted you for that crime, did he not?—A. I do not think he did. I plead guilty to it.

Q. Were you indicted at that time for shooting across the public road?—A. Yes, sir.

Q. Were you not indicted at that time for shooting across the public road from the court-house in Andalusia to Bradley's barroom at Lewis Harrison?—A. I was not indicted for shooting Lewis Harrison.

Q. Shooting at him across the public road, at Lewis Harrison?—A. I was not indicted for shooting across the road at him.

Q. What other times have you been convicted, if any?—A. I was convicted in Covington County once for carrying concealed weapons—a pistol.

Q. When was that?—A. That was some time while Stallings was solicitor.

Q. What else?—A. I do not remember to ever having been indicted for anything else.

Q. You say you were convicted for carrying concealed weapons in Covington County?—A. I think so, yes.

Q. Where else, Mr. O'Neal, have you been convicted?—A. I do not remember having been convicted of anything else.

Q. Don't you remember having been convicted in Henry County?—A. No, sir.

Q. You were not convicted in Henry County for carrying concealed weapons?—A. I do not think I was.

Q. Didn't you plead guilty to a charge of carrying concealed weapons there about two years ago?—A. I don't think so; yes, I was.

Q. You were convicted there?—A. I plead guilty to it; yes.

Q. Well, what other times, Mr. O'Neal, have you been convicted?—A. I do not think of any others.

Q. Were you not charged in Henry County with having made a murderous assault upon one Simonton with a claw hammer?

Counsel for respondent objects to question.  
Counsel for prosecution withdraws question.  
Q. Mr. O'Neal, you were sued civilly for assault made by you upon one Mr. Simonton, were you not?

Q. Was there or was not there a judgment recovered against you in Henry County for a murderous assault made by you upon one Simonton?

Counsel for respondent objects to question as showing result of the suit and proving a judgment that is a matter of record. Objection overruled and exception noted by counsel for respondent.

A. He sued me—Mr. Simonton sued me and recovered \$50.  
Q. Sued you for what?—A. For damages about a fight we had. He and I had a fight.

Q. The allegation was that you had struck him with a claw hammer, was it not?—A. Yes, sir.

Q. Do you know what became of Mr. Simonton after that?—A. Yes, sir.

Q. What?—A. He is in Pensacola now.

Q. He is?—A. Yes, sir.

Mr. Manager PALMER. I think something has been omitted from the testimony as found on page 223 which ought to be read. It is in the middle of the extract. An omission was made, and I think the part ought to be read.

The SECRETARY. It was erased.

Mr. Manager PALMER. It was not the fault of the Secretary. When Mr. O'Neal was asked whether he had been convicted of any crime, counsel for the respondent objected, and there was a ruling, and the objection and the ruling of the court ought, in all fairness, to be read as a part of the record.

Mr. HIGGINS. The learned manager of the House of Representatives will have the time to do that.

Mr. Manager PALMER. I think I have a right to have it read now.

Mr. HIGGINS. I hope this will not be taken—

The PRESIDING OFFICER. The Presiding Officer supposes counsel for respondent have—

Mr. HIGGINS. I do not object.

The PRESIDING OFFICER. A right to determine what they will have read from the evidence.

Mr. HIGGINS. I will allow it to go in. I think it is irregular, but I will let it be read.

The Secretary read as follows:

Q. Mr. O'Neal, have you ever been convicted of any crime?

(Counsel for respondent objects to the question.)

The COURT. It has always been the practice here that any witness, including himself, can be asked questions in the criminal docket. In the prosecution of the criminal docket here—trial of criminal cases—it is a very common question, of which I can cite a dozen or more instances, whether or not the witness, does not matter what witness, any witness, has not been convicted of this or that or the other offense, not for the purpose of trying him for any other offense at all, but under the rules for the purpose of striking at his credibility. I will give you an exception.

(Counsel for respondent notes exception to ruling of the court.)

Mr. HIGGINS. I now ask the Secretary to read the direct examination by Mr. Blount.

The Secretary read as follows:

Direct examination by W. A. BLOUNT, Esq.:

Q. You are the W. C. O'Neal against whom this proceeding has been taken?—A. Yes, sir.

Q. Mr. O'Neal, will you please state to the court the circumstances attending—not leading up to at that time—but the circumstances attending the affray between you and Mr. A. Greenhut? Where had you been; [where] were you coming from that morning?—A. I was coming from home.

Q. Where did you stop on East Government street?—A. I stopped there in front of Mr. Greenhut's place of business.

Q. He spoke of your stopping in front of the bucket shop. What place was that?—A. I do not remember whether I stopped there or not. I might have done it—at the Pensacola Stock Exchange.

Q. For what purpose did you stop?—A. I stopped there to see the quotations on cotton.

Q. Now, then, you proceeded until you came to Mr. Greenhut's, did you?—A. Yes, sir.

Q. Then state what occurred—exactly what occurred thereafter, anything and everything from the moment that you addressed him until the time that you were finally taken apart.—A. I passed down the street, and I saw Mr. Greenhut and Mr. Lischkoff talking. I spoke to both. I says, "Good morning," and I says, "Mr. Greenhut, I would like to see you when you are at leisure," and Mr. Greenhut said, "I am at leisure now," and I says to Mr. Greenhut, "Don't let me interrupt you; any time during the day will do," and Mr. Lischkoff says, "I am through," and he left or started to turn to go back up the street toward his place of business, and Mr. Greenhut says, "Come in." He stepped back into the back part of his office there and I went on (in), and I asked him why he had sued us. He says, "Well, I do not know anything about it; you will have to see my lawyer about it." I says, "Mr. Greenhut, I think you do know something about it. I think you were a director of the American National Bank when this paper that I am sued on was sold and transferred," and I says, "We did not sue you when we had to sue you without seeing you about it or without talking to you about it. We did everything we could to avoid the suit; we did everything we could to get a settlement of that before we sued you," and I talked on with him regarding this matter in that way, and I reminded him of the fact that Mr. Eagan had tried to get a settlement with him before we sued him on the \$1,500 debt, and I found out after talking with him it seemed it was impossible to get a settlement with him that way, and I says to him—I finally told him that I thought that if he had been a gentleman he would not have done it, and he said, "I am as much a gentleman as you are"—being a director in the bank and refusing to pay a paper and letting us sue him on it, and he says he was as much of a gentleman

as I am. I says, "Mr. Greenhut, I won't dispute that with you on that point. I do not want any trouble with you," and when I said that to him, why, he made a motion that way, like he would strike me with his fist, and says, "If you fool with me I will do you up here," and I says, "No, I reckon not," and I stood there for a moment hesitating, and I turned to go out. He come on following me and he said something to me. I do not know what he said, and when he said that I told him that he lied to me about the Moreno paper, and as I told him that I turned around, and Mr. Greenhut he struck me here, and I struck him with my left fist, and then I shoved him off, and when I shoved him back he kind of stumbled back like—he looked to me like he almost fell down; then he came forward at me and I pulled out my knife and cut him, and we fought on out on the street there, and I made several lunges for him and he hit me several licks with his fist, and finally he caught hold of my arm here with his right hand, and after he caught my arms I reached around and caught hold of his other arm out in the streets, and then I holloed to old man Hyer to come there and get him—

Mr. HIGGINS. Mr. President, I do not propose to quote otherwise from this testimony. I will simply state that Greenhut, whose affidavit is set out on the answer of the respondent, denies that he struck O'Neal or was the aggressor in any way. This testimony was not delivered in the presence of the Senate, and you can only get it as you read it or as it is read in your presence, and for that reason I have not undertaken to make a running statement of it myself. I thought it due to the gravity of this charge and to a right judgment on this article that the very words of O'Neal should be read to the Senate.

Now, in that you will see that he says that he reproached Greenhut; he began the trouble. He reproached him about bringing the suit against the bank when he said Greenhut knew it was an unfounded suit, and then there was other discussion as to the unfairness. Now, here is a very significant statement that he makes:

He says: "I think you were a director of the American National Bank when this paper that I am sued on was sold and transferred," and I says, "We did not sue you when we had to sue you without seeing you about it or without talking to you about it. We did everything we could to avoid the suit; we did everything we could to get a settlement of that before we sued you," and I talked on with him regarding this matter in that way, and I reminded him of the fact that Mr. Eagan had tried to get a settlement with him before we sued him on the \$1,500 debt, and I found out after talking with him it seemed it was impossible to get a settlement with him that way, and I says to him—I finally told him that I thought that if he had been a gentleman he would not have done it, and he said, "I am as much a gentleman as you are."

In other words, he goes in there and reproaches him, and when he could not get a settlement with him then he took his settlement.

Now, Mr. President, turn to the answer of O'Neal. After reciting the fact in his answer that he failed in the cause, on page 204 he says:

That it is not true that the assault charged in the said affidavit was committed by the respondent solely because and for the reason that the said Greenhut had instituted the suit aforesaid against the said American National Bank or to interfere with and prevent him, the said Greenhut, from exercising and performing his duties as an officer of this court.

Now, you will observe that that denial is an admission. While he says he did not reproach him solely for that, the fact that he says he did not do it solely for that admits that he did it in part for that, and therefore admits that he did it on that account. Consequently, Judge Swayne was bound to see that O'Neal had here admitted the substantial averment of Greenhut's allegation. Now, he comes in. What is the alleged purgation?

That in truth the respondent never contemplated at any time any interference with the said Greenhut as trustee as aforesaid or contemplated any affray with the said Greenhut or any personal conflict with him until he saw the threatening attitude of the said Greenhut toward him, the respondent, as hereinbefore set forth, and that so far as respondent can determine from the actions of the said Greenhut, who was the aggressor as aforesaid, the cause of the said affray was the remark of respondent to the said Greenhut concerning the said Greenhut's action in repudiating his obligation to pay the said acceptance.

And respondent disclaims the existence on his part at any time of any intent to interfere with, prevent, impede, or delay the said Greenhut in the prosecution of the said suit against the said bank, or to interfere with or impede or prevent him in anywise in the execution or performance of any of his duties as such trustee; and specially disclaims any attempt to do any act which might savor in the slightest degree of contempt of this honorable court.

There, Mr. President, is the admission, a fatal admission, right in the midst of that attempted disclaimer of contemptuous purpose, of what his acts were.

Mr. Manager PALMER. Mr. President, will you allow me to call your attention to Mr. Greenhut's affidavit, on which this proceeding was founded?

That said assault and attempt to murder was committed by said O'Neal, as aforesaid, solely because and for the reason that affiant, as an officer of the United States district court—

That portion of the answer is a direct denial of that portion of the complaint.

Mr. HIGGINS. Exactly, but, Mr. President, the converse of the proposition is always not as true as the proposition. While

it is specific for Greenhut to charge that he had come there solely for that purpose, it would have been entirely within Mr. O'Neal's right, if it had been true and he had chosen to assert it under the responsibility of his counsel, Mr. Blount, who was acting for him, to say, "I did not reproach him for that reason at all, but entirely for another reason." But when he denies it in the terms of the allegation, then it is an evasive denial, and I thank the learned manager for allowing me to make that clear before the Senate.

The attempted explanation or excuse for it will, in my opinion, not bear examination.

Now, Mr. President, in the face of this condition of things was Judge Swayne to accept this evasive, uncertain undertaking to deny and not deny these fatal admissions of culpability on the part of O'Neal? Was he to accept them as a statement in law which justified his discharge and justified the enthusiasm which the learned manager who last addressed the Senate showed for what was once spoken of another as "this fine, consummate flower of our American citizenship?" The learned managers say that O'Neal by this statement purged himself. The learned manager who will follow me will not deny the difference in the rules of law as to contempt and purgation between the common law and equity. This was a case in equity. Scarrit Moreno was adjudicated a bankrupt, and bankruptcy proceedings are equitable proceedings. Greenhut was his trustee or receiver. He was therefore the agent and minister and officer of a court of equity. On that the law that has been invoked is laid down as old as Blackstone, from whom I shall read. In the first place I will read from Rapalje on Contempt:

In chancery the answer of a party charged with contempt is not conclusive, and the truth of the answer may be examined into and disproved. In such a case, however, the accused may adduce evidence extrinsic to his answer and call witnesses to testify in his behalf; and though not conclusive, his answers to the interrogatories are evidence in his favor, to be considered in connection with the other evidence in the case. (Rapalje on Contempt, sec. 120.)

Now, I read this quotation from Blackstone, with which every student of law is familiar:

It can not have escaped the attention of the reader that this method of making the defendant answer upon oath to a criminal charge is not agreeable to the genius of the common law in any other instance, and seems, indeed, to have been deprived to the courts of King's Bench and common pleas through the medium of the courts of equity. For the whole process of the courts of equity in the several stages of a cause, and, finally, to enforce their decrees, was, till the introduction of sequestrations, in the nature of a process of contempt, acting only in personam and not in rem. And there—

That is, in equity—

after the party in contempt has answered the interrogatories, such his answer may be contradicted and disproved by affidavits of the adverse party, whereas in the courts of law, the admission of the party to purge himself by oath is more favorable to his liberty, though perhaps not less dangerous to his conscience, for if he clears himself by his answers the complaint is totally dismissed. (4 Blackstone, 287.)

This, therefore, was a proceeding in equity, where it was the right and duty of the judge to hear evidence on either side, and no objection was made to that at the time, as none can be made now.

The learned manager who has assumed especially the discussion of this case rests the demand for the condemnation of Judge Swayne of impeachment and of conviction on the ground that it was clearly outside of the jurisdiction of his court by reason of the act of 1831. Of course O'Neal was not an officer of the court. He therefore was not within the jurisdiction as limited by the act in that respect. But the learned manager goes on to say that he was not obstructing the administration of justice or it was not misbehavior so near the court as to obstruct the administration of justice. He does admit, however, as I understood him, that if he is guilty it was resistance to an officer of the court, though I do not know whether I was right in understanding the learned manager distinctly to admit that.

Now, Mr. President, I beg leave to refer to the former discussion which I have made of this question and to the decisions of the several courts in respect to it. The learned manager falls back upon Poulson's case in the circuit court of Pennsylvania, made by a justice of the Supreme Court of the United States sitting in that circuit and shortly after the enactment of the statute of 1831. In that Mr. Justice Baldwin said that clearly after the enactment of that act and offense which was subject to indictment could not be made the subject of contempt. He and the learned manager [Mr. CLAYTON], who also addressed the Senate this morning on that subject, rely upon *ex parte Robinson*, in 19 Wallace. I wonder that the learned managers remain back in cases so old and going to the circuit courts when they have the utterance of the Supreme Court upon this subject, which leaves it without any question. I think the Senate is entitled at least to be treated with the respect which is due to the court of last resort by letting it have whatever is the real

law or the last utterance. I beg to read from the case of Savin, petitioner, in 13 United States, 275, and that case was decided as far back as 1888, where the court say:

It is contended that the substance of the charge against the appellant is that he endeavored, by forbidden means, to influence or "impede" a witness in the district court from testifying in a cause pending therein, and to obstruct or impede the due administration of justice, which offense is embraced by section 5399—

That is the second section of the act of 1831 making contempt offenses indictable in certain cases—

and, it is argued, is punishable only by indictment. Undoubtedly the offense charged is embraced by that section, and is punishable by indictment. But the statute does not make that mode exclusive, if the offense be committed under such circumstances as to bring it within the power of the court under section 725; when, for instance, the offender is guilty of misbehavior in its presence, or misbehavior so near thereto as to obstruct the administration of justice. The act of 1789 did not define what were contempts of the authority of the courts of the United States in any cause or hearing before them, nor did it prescribe any special procedure for determining a matter of contempt. Under that statute the question whether particular acts constituted a contempt, as well as the mode of proceeding against the offender, was left to be determined according to such established rules and principles of the common law as were applicable to our situation. The act of 1831, however, materially modified that of 1789, in that it restricted the power of the courts to inflict summary punishments for contempt to certain specified cases, among which was misbehavior in the presence of the court, or misbehavior so near thereto as to obstruct the administration of justice. (*Ex parte Robinson*, 19 Wall., 505, 511.) And although the word "summary" was, for some reason, not repeated in the present revision, which invests the courts of the United States with power "to punish by fine or imprisonment, at the discretion of the court, contempts of their authority" in certain cases defined in section 725, we do not doubt that the power to proceed summarily for contempt in those cases remains, as under the act of 1831, with those courts.

The facts in this case of Savin were the attempt to deter a witness in attendance upon a court of the United States in obedience to a subpoena, and while he is near the court room, in the jury room temporarily used as witness room, from testifying for the party in whose behalf he was summoned, and offering him, when in the hallway of the court, money not to testify against the defendant, and the court held that that is misbehavior in the presence of the court.

So you have here the final decision that because the act was indictable was no reason why it was not punishable by Judge Swayne. You have the law from Blackstone's time, and from time immemorial before, that in this equity proceeding it was his duty to hear the evidence of both sides. This same case of Savin goes on to lay down that it was not necessary to propound interrogatories but that a rule to show cause was proper. The same case lays down the further principle that the motion or charge need not be under oath or testified to by affidavit. O'Neal had the opportunity to defend himself, to appear and to answer, and he took advantage of it.

Now, that brings you to the merits of the case. On this it is claimed that the punishment of O'Neal was an unjust judgment. It was claimed before Judge Pardee in the circuit court, in a case that was argued before all three judges, that because the Judge was not in the district at the time, and because the court was not in session, and further because Greenhut's place was 400 feet away from the court room, there was no obstruction in the presence of the court; and that was laid down as a further reason why he should be discharged on habeas corpus.

Judge Pardee in his opinion says:

The charge of contempt against the relator is based upon the fact that he unlawfully assaulted and resisted an officer of the district court in the execution of orders of the court and in the performance of the duties of his office under such orders, and in that respect it would seem to be immaterial whether the place of resistance was 40 or 400 feet from the actual place where the court was usually held, so long as it was not in the actual presence of the court nor so near thereto as to embarrass the administration of justice.

Under the bankruptcy act of 1898, section 2, the district courts of the United States, sitting in bankruptcy, are continuously open; and under section 33 and others of the same act a trustee in bankruptcy is an officer of the court. The questions before the district court in the contempt proceedings were whether or not an assault upon an officer of the court, to wit, a trustee in bankruptcy for and on account of and in resistance of the performance of the duties of such trustee, had been committed by the relator, and if so, was it under the facts proven a contempt of the court whose officer the trustee was?

Unquestionably the district court had jurisdiction summarily to try and determine these questions, and having such jurisdiction, said court was fully authorized to hear and decide and adjudge upon the merits. (In re Savin, 131 U. S., 267, 276, 277.)

Now, Mr. President, that is the decision of the circuit court of appeals as to this defense, which is sought to be set up here to-day, that Judge Swayne should be condemned for this proceeding because it was 400 feet from the court room, and in the face of the decision in this very litigation when it was carried up upon appeal by habeas corpus.

Now, the course of Judge Swayne seems to me to disclose in every phase of it a most complete lack of malice, the gravamen of the charge made in the article on this head. He had nothing against O'Neal. O'Neal was a citizen of that town and

president of a bank. There is no evidence here of any differences between them in one way or another. This was a case inter partes, brought to the court by Greenhut under affidavit. There was I think, without any unfairness or characterization, an attempt at assassination. Under the rule as laid down by Blackstone there being a dispute as between O'Neal and Greenhut it was for the Judge to determine it upon the testimony. The learned managers have read the Judge's charge for various reasons, both to show that he acted on insufficient reason and unfairly and to show that it was not much of a decision after all. I beg to differ with them. I grant you that this was not a decision of an indictment for assault and battery. It was not the direct question before the court as to whether or no O'Neal should be acquitted by the jury under a charge of the court for making an assault with intent to kill and as to the law that governs that. But when the defense is made there, as it was by him, and the testimony I have had read to the Senate that he was not the aggressor, that Greenhut was the aggressor, then it became the duty of the Judge to lay down the rules of law which govern the conduct of people when it comes to determining what is right or wrong in an assault like this. The only ground on which O'Neal could pretend to justify the use of a dagger was that he could do it when he had retired to such a point that he could no longer retreat and then could strike in self-defense, but without the plea of self-defense he stood there a proven aggressor, and with no excuse for the use of a knife.

The case, Mr. President, then proceeded. I will state that Mr. Blount had demurred to the jurisdiction so as to raise that question under the statute of 1831. The Judge overruled that.

Upon the sentencing of O'Neal to sixty days' imprisonment, he allowed a writ of error, that Mr. Blount might take the case to the Supreme Court of the United States, and granted a supersedeas, so that the imprisonment should not begin pending that proceeding.

He further certified, under the act of 1891, this question of jurisdiction to the Supreme Court, so that it could be heard there. The case therefore came to the Supreme Court of the United States upon writ of error, and that court held that, jurisdiction of the person and jurisdiction of the subject-matter not being challenged, the case stood before that court only as a dispute on its merits, and that such a question could not be reviewed in the Supreme Court of the United States on writ of error. Thereupon it went back, and O'Neal suffered imprisonment long enough to have a writ of habeas corpus. Then the case was carried up to the circuit judges, who delivered the judgment I have here already read from. Then, before imprisonment could be had, O'Neal died.

Mr. President, that is all we shall say about the O'Neal case. There was no evidence of malice, no evidence of want of jurisdiction, no evidence of injustice or unfairness; but I think that every judge and lawyer within my hearing would say that if Judge Swayne, on such a case as this brought before him and compelled to render judgment, had not treated it as a matter of proven contempt he would have brought himself much more nearly to deserving impeachment and conviction than by deciding contrariwise.

But, Mr. President, that is not the end of the O'Neal case. The O'Neal case is the beginning of the Swayne impeachment case. The testimony which has been read to the Senate, elicited with the utmost propriety and regularity in cross-examination, when O'Neal was tendered as a witness on his own behalf to swear in justification of his alleged misconduct in an act of violence, and was subject to cross-examination as to his criminal record in that regard, showed that he had been twice convicted for assault with intent to kill, and not for shooting across the street in the sugar-coated form put by the learned manager this morning; that at another time he had been convicted or plead guilty, which was the same thing, to the charge of carrying concealed deadly weapons, and that at another time he had been sued in a civil suit and a penalty imposed or damages recovered for a violent attack with a clawhammer upon a man—violent, vindictive, dangerous. If ever there was evidence of malice it was what took place afterwards. By the evidence in this case the president of a bank, presumably a man of wealth, he employed counsel; he sent them to the Florida legislature, and he brought before it matters and carried on proceedings there in a way that, I submit, abused the confidence of that legislature.

Mr. Manager PALMER. Mr. President, will the counsel kindly refer to the record where there is any proof of that kind in this case before the Senate?

Mr. HIGGINS. The proof is found in the beginning of the learned manager's own argument, where he had read resolu-

tions of the Florida legislature, which I will now ask to have read by the Secretary.

Mr. Manager PALMER. I respectfully submit that there is no testimony in this case that Mr. O'Neal, or anybody for him, ever had anything to do with the resolutions of the Florida legislature.

Mr. HIGGINS. I will say to the honorable manager that I proved that by Mr. Davis on cross-examination.

Mr. Manager PALMER. I did not hear it.

Mr. HIGGINS. I did.

Mr. Manager PALMER. I should like to see the place in the record where it appears.

Mr. HIGGINS. I can not turn to it at this time, but it is there.

Mr. Manager PALMER. I do not think there was any such testimony.

Mr. HIGGINS. And I was very careful to prove it.

Mr. President, I should like to have those resolutions reread.

Mr. Manager PALMER. All right; you may have them read if you wish.

Mr. HIGGINS. I ask the Secretary to read from page 61 of the record.

The Secretary read as follows:

Senate joint resolution in reference to Charles Swayne, judge of the United States court for the northern district of Florida.

*Be it resolved by the legislature of the State of Florida,* Whereas Charles Swayne, United States district judge of the northern district of Florida, has so conducted himself and his court as to cause the people of the State to doubt his integrity and to believe that his official actions as judge are susceptible to corrupt influences and have been so corruptly influenced;

Whereas it also appears that the said Charles Swayne is guilty of a violation of section 551 of the Revised Statutes of the United States in that he does not reside in the district for which he was appointed and of which he is judge, but resides out of the State of Florida and in the State of Delaware or State of Pennsylvania, in open and defiant violation of said statute, and has not resided in the northern district of Florida, for which he was appointed, in ten years, and is constantly absent from said district, only making temporary visits for a pretense of discharging his official duties;

Whereas the reputation of Charles Swayne as a corrupt judge is very injurious to the interests of the entire State of Florida, and his constant absence from his supposed district causes great sacrifice of their rights and annoyance and expense to litigants in his court;

Whereas it also appears that the said Charles Swayne is not only a corrupt judge, but that he is ignorant and incompetent, and that his judicial opinions do not command the respect or confidence of the people;

Whereas the administration of the United States bankruptcy act in the court of said Charles Swayne and by his appointed referee has resulted in every instance in the waste of the assets of the alleged bankrupt by being absorbed in unnecessary costs, expenses, and allowances, to the great wrong and injury of creditors and others, until such administration is in effect legalized robbery and a stench in the nostrils of all good people;

*Be it resolved by the house of representatives of the State of Florida (the senate concurring),* That our Senators and Representatives in the United States Congress be, and they are hereby, requested to cause to be instituted in the Congress of the United States proper proceedings for the investigation of the proceedings of the United States circuit and district courts for the northern district of Florida by Charles Swayne as United States judge for the northern district of Florida, and of his acts and doings as such judge, to the end that he may be impeached and removed from such office.

*Resolved further,* That the secretary of the State of Florida be, and is hereby, instructed to certify to each Senator and Representative in the Congress of the United States, under the great seal of the State of Florida, a copy of this resolution and its unanimous adoption by the legislature of the State of Florida.

Mr. HIGGINS. Now, Mr. President, here at the forefront of the presentation of this case to the Senate has been placed by the learned manager these resolutions, and I call the attention of the Senate to the fact that there is nothing left of all that is charged there except these two contempt cases and the matter of residence. In those resolutions it is said that Judge Swayne is "a corrupt judge," so "as to cause the people of the State to doubt his integrity, and believe his official actions as judge are susceptible to corrupt influences, and have been so corruptly influenced; \* \* \* that he is ignorant and incompetent, and that his judicial opinions do not command the respect or confidence of the people," and that the appointment of referees by him in bankruptcy resulted—

in every instance in the waste of the assets of the alleged bankrupt by being absorbed in unnecessary costs, expenses, and allowances, to the great wrong and injury of creditors and others, until such administration is in effect legalized robbery and a stench in the nostrils of all good people.

All that is said here was abandoned by the committee of the House who were sent there to investigate. It is in evidence in the certificates that have been filed—and I will shortly call attention to the special dates—that Judge Swayne during these years was holding court for the greater part of the year in the States of Texas, Louisiana, and Alabama. Is there any complaint there that he was a corrupt judge, an unjust judge, an unfit judge, or of the waste of the assets of bankrupt estates, or

of forfeiting the confidence of the community? Not a word. The only other charges that are brought here are those that came outside of what the legislature of Florida had called to the attention of the House of Representatives and of the Senate in a vague endeavor to bolster up the contempt proceeding and the charge with respect to residence.

This case does not come into this tribunal with very clean hands. I submit the legislature of Florida—a body deserving of the highest respect and the confidence of the community—never would have passed these resolutions, let alone passing them unanimously, if they had been offered after, instead of before, the investigation of the House committee and the abandonment by them of the charges that caused the demand for impeachment.

Mr. President, that brings me to the matter of residence; and I shall not take very long about it. The testimony that it has been for us to adduce has, I think, cleared the atmosphere and explained the condition of things as respects Judge Swayne's residence during the time in question. As the learned manager this morning very properly admitted, Judge Swayne had a reasonable time in which to change his residence after the act of Congress altering the boundaries of his district and leaving his then residence out of his curtailed district. They say that he did not do it. In the statement of the learned manager who opened the case, in the efforts of the managers in the examination of their witnesses, and up until the argument this morning of the manager who has charge of the article of impeachment relating to residence, the case they have undertaken to make is that Judge Swayne had a residence outside of his district, namely, at Guyencourt. You heard the witnesses from that neighborhood—three farmers, the owners of their land; the fourth, a farmer and a coal dealer, who furnished coal to the family; the fifth, a physician, who attended Mrs. Swayne, the mother of the Judge; another, the postmaster and station agent, who has knowledge of the going and coming of people to and from home; and Mr. Milton Jackson, the manufacturer, of Philadelphia, who had married Judge Swayne's sister in the same year of the Judge's own marriage and knowing with family intimacy the goings and comings—the testimony of all these put beyond the possibility of question that wherever Judge Swayne did live he did not live at Guyencourt. If there is any certainty in this case, that is the one certain thing. Well, he had to live somewhere. They say he did not live at Pensacola, but they do not yet undertake to say where he did live. But why did he not live in Pensacola? Because he was not there. How do you know he was not there? He went away when court adjourned. Why did he go away and where did he go? They do not know. Did he go to hold court elsewhere? Of course they do not know.

Mr. President, the fact is that he was holding court elsewhere. He did pay summer visits, and his family paid summer visits, to his old home in Delaware every year—a most convenient, admirable, and wise arrangement, and one about which no complaint is to be made. But the fact is, as I have had occasion to state before, that the breaking up of his family residence at St. Augustine was concurrent with and contemporaneous with the other condition of things which dominated the domestic situation of that family and made it a broken household. We all know of broken households; we all know of the customary condition where parent and children live together along through the ordinary course of life, and then comes some dominating influence that scatters them and sends them out. What was the influence here? The circuit judges had occasion to send Judge Swayne to Texas to hold court, to draft him to New Orleans to sit in the court of appeals, and to go elsewhere to hold court. They called on him to perform this work; and because, Mr. President, they had curtailed his district, so that he has nothing to do, they now turn around and impeach him for not staying there to do that nothing, drawn off, as he was, by the circuit judges to these other places.

While that was the case, there was no reason that commanded the presence of his family at Pensacola. It was open to their election, Mr. President, not to go there. Judge Swayne was not subject to impeachment because his wife, his daughter, and his sons were elsewhere. What did they do? You had the intelligent, reliable story told here yesterday by his son, who, of course, knew all about these matters and had refreshed his recollection by looking at letters that he had received from time to time.

So it appears that Mrs. Swayne and her daughter paid visits in Chester County, Pa., and in Philadelphia; spent the summer at Guyencourt, and spent the other time around and at large, sometimes with the Judge at New Orleans, sometimes in Texas, and sometimes in Pensacola, but at other times where it pleased them to go, as they should be permitted to do, without subjecting him to impeachment. "But here," say some very

good people of Pensacola—and very naturally—"he does not live here; his family is not here." Well, that is another proposition entirely. Finally they go to Europe and spend a year. The Judge went over with them one month and came back the next with his oldest son. Then, at last, they find a house in 1900; and yet the learned manager this morning had it in his heart to say that Judge Swayne bought the house in 1903 because the Florida legislature passed resolutions demanding his impeachment. I am surprised, Mr. President, at the statement of the manager, for the evidence is overwhelming that his family were residing there from 1900.

In the same way, it seems to me, the learned manager this morning distorted the facts when he said that while the family were there then Judge Swayne was holding court in Pensacola and after that neither he nor his family were there. Well, pray, how could he be holding court in Pensacola when he was holding court in Texas and elsewhere out of his district? Of course he could not be. After he came back there may have been more court days. Very likely there were. They are of value here as showing the place where you can locate him during that time.

I beg to have printed as a part of my remarks a calendar. I will say that we will introduce in evidence certificates from the clerks of the respective courts—the circuit court of appeals of New Orleans, various districts in Texas and Alabama, and Baton Rouge, in Louisiana—where Judge Swayne held court, the number of days that those court records show him to be away from his district, and also the certificate of the days that he was holding court at Pensacola or Tallahassee, the two places for holding court in his district. We will show, according to a calendar we have had prepared, that commencing in April, 1895, he was holding court in either the State of Alabama, Louisiana, or Texas, continuously engaged in the discharge of judicial duties outside of his district and in those States during the following months:

1895, four months, including April and May and November and December.

1896, eight months, including January to June and November and December.

1897, six months, including January to July.

1898, seven months, including January to May and November and December.

1899, six months, including January to June and October and November.

1900, six months, including January, May, June, September, October, and December.

1901, two months, including January and September.

1903, two months, including January and February.

We will also show from the records of the courts of Florida, Alabama, Louisiana, and Texas, that he was continuously engaged in the discharge of judicial duties in those States during calendar months, as follows:

1895, ten months, from January 18 to July 16 and October 15 to December 21.

1896, nine months, from January 17 to July 1 and November 2 to December 19.

1897, eight months, from January 9 to July 3 and December 14 to December 21.

1898, eight months, from January 3 to June 8 and November 15 to December 17.

1899, nine months, from January 27 to June 5 and October 5 to December 5.

1900, eleven months, from January 7 to July 4 and September 3 to December 29.

1901, ten months, from January 7 to June 29 and September 2 to December 31.

1902, eight months, from January 1 to June 18 and November 6 to December 16.

1903, nine months, from January 12 to June 1 and September 30 to December 31.

Mr. President, I will now submit, as a part of my remarks, to be printed without reading, a calendar which will give the specific dates. I have had them summarized in that short form to show the time.

Mr. Manager PALMER. How many days do you make it, Mr. Higgins?

Mr. HIGGINS. I will give you that, if you please. This calendar makes the number of days on which court was opened and adjourned, Judge Charles Swayne presiding, in districts other than the northern district of Florida, 814; estimated days traveling to courts outside of district, 102; number of days in the northern district of Florida, 597—within 3 of 600; intervening days, such as Sundays, holidays, etc., distributed between the time when sitting in his district and sitting outside, 192 days. I have not added up the total of them, but it will make, during that time—three years—as I made the calculation, when holding court outside of his district, three hundred days in the year, and of course a much longer time than that, because he did not sit there every year that long.

Mr. Manager PALMER. I do not think it is worth while to raise any question about this business, because the certificates are in the record. But, in point of fact, we have gone over the

certificates very carefully, and we find that the number of days he held court outside of his district was five hundred and seventy days during those years. That is all the certificates show. I do not propose to make any objection to counsel putting into the record anything he wants to, but there are the certificates, and if anybody is curious about them he can find out.

Mr. HIGGINS. I stand by our inspection, count, and calculation.

Mr. Manager PALMER. All right.

Mr. HIGGINS. I think it is as careful as that of the learned manager.

The papers referred to are as follows:

Calendar showing days upon which Charles Swayne, district judge, held terms of court from January 1, 1895, to January 1, 1904, being extracts taken from certificates furnished by clerks of United States courts submitted in evidence.

1895: Tallahassee, January 18 and 19; Tallahassee, February 4 and 5. Pensacola, February 6 and 7; Pensacola, March 4 to 18. Tallahassee, April 16, 17, 18. New Orleans, April 19, 20, 25 to 30. Baton Rouge, April 22 to 24. New Orleans, May 1 to 4 and 13 to 31. Pensacola, May 6 to 9. Tallahassee, July 16. Pensacola, October 15, 16, 17; Pensacola, November 5 to 16. Waco, November 18 to 30; Waco, December 1 to 21.

1896: Pensacola, January 17 and 18. Dallas, January 21 to 31; Dallas, February 1 to 29; Dallas, March 1 to 24. Pensacola, April 7 to 25. Waco, April 27 to 30; Waco, May 1 to 16. Dallas, May 18 to 30; Dallas, June 1 to 27. Pensacola, June 29 and 30; Pensacola, July 1. Tallahassee, November 2. Pensacola, November 4 to 13. Waco, November 18 to 30; Waco, December 1 to 19.

1897: Pensacola, January 9; Dallas, January 11 to 31; Dallas, February 1 to 27; Fort Worth, March 1 to 13; Pensacola, April 6 to 16; Waco, April 20 to 30; Waco, May 1 to 15; Dallas, May 17 to 31; Dallas, June 1 to 30; Dallas, July 1; Pensacola, July 2 and 3; Pensacola, December 14 to 21.

1898: New Orleans, January 3 to 14; Pensacola, January 14 and 15; New Orleans, January 16 to 31; New Orleans, February 1 to 28; New Orleans, March 1 to 31; New Orleans, April 1 to 30; New Orleans, May 1 to 28; Pensacola, May 28 to 31; Pensacola, June 1 to 4; Tallahassee, June 6, 7, 8; Pensacola, November 15 to 19; New Orleans, November 21 to 30; New Orleans, December 1, 2, 3; Pensacola, December 7 to 17.

1899: Pensacola, January 27 and 28; New Orleans, January 30 and 31; New Orleans, February 1 to 28; New Orleans, March 1 to 18; Pensacola, March 20 to 25; Birmingham, April 4 to 30; Pensacola, May 1 to 6; Tallahassee, May 9 to 13; Pensacola, May 15 to 20; Birmingham, May 22 to 31; Birmingham, June 1 to 5; Pensacola, October 5 and 6; Huntsville, October 9 to 30; Huntsville, November 1; Pensacola, November 6 to 18; Tallahassee, November 20 to 24; Pensacola, November 25 to 30; Pensacola, December 1 and 2; Tallahassee, December 4 and 5.

1900: Huntsville, January 7 to 19; Pensacola, January 23 to 26; Pensacola, May 4 to 19; Tallahassee, May 22 and 23; New Orleans, May 24 to 31; New Orleans, June 1 to 15; Tyler, June 18 to 28; Pensacola, July 4; Birmingham, September 3 to 30; Birmingham, October 1 and 2; Pensacola, October 3; Birmingham, October 4, 5, 6; Pensacola, November 8 to 17; Tallahassee, November 19 to 22; Pensacola, November 23 to 30; Pensacola, December 1; Tyler, December 3 to 29.

1901: Huntsville, January 7 to 19; Pensacola, January 2 to 6 and 20 to 31; Pensacola, February 5 to 28; Pensacola, March 1 to 30; Pensacola, April 1 to 30; Pensacola, May 1 to 31; Pensacola, June 1 to 29; Birmingham, September 2 to 16; Pensacola, November 4 to 18; Tallahassee, November 18 to 22; Pensacola, November 23 to 30; Pensacola, December 1 to 31.

1902: Pensacola, January 1 to 31; Pensacola, February 1 to 28; Pensacola, March 1 to 23; Tallahassee, March 24 to 27; New Orleans, March 28 to 31; Pensacola, April 1 and 2; Pensacola, June 16, 17, 18; Pensacola, November 6 to 29; Pensacola, December 1 to 16.

1903: Tyler, January 12 to 31; Tyler, February 1 to 16; Pensacola, March 2 to 14; Pensacola, April 15 to 30; Pensacola, May 1 to 17; Tallahassee, May 18 to 23; Pensacola, May 24 to 30; Pensacola, June 1; Pensacola, September 30; Pensacola, October 1 to 31; Pensacola, November 2 to 22; Tallahassee, November 23 to 28; Pensacola, November 29 and 30; Pensacola, December 1 to 31.

#### MEMORANDUM.

Number of days on which court was open and adjourned, Charles Swayne, judge, presiding, in districts other than northern district of Florida.....	814
Same in the northern district of Florida.....	597
Intervening days, such as Sundays, holidays, etc.....	192
Estimated days traveling to courts outside of district.....	102

NOTE.—Period from January 1, 1895, to January 1, 1904.

Mr. HIGGINS. The fact, therefore, is that the suspicion, the idea, the notion that underlies this charge, which was carried to the Florida legislature and brought here, is that a man lives where his family does, and if his family is not there he does not reside there. But it is a mixed question of law and fact, dependent upon the circumstances; and in this case his family did not go to Pensacola because he was away from there.

Further, you have the testimony that he could not get a house there, and that he tried to get one.

The learned manager said this morning that in 1898 he registered as from St. Augustine. Mr. President, for years I dated my letters "1856." I could not get rid of the habit of dating my letters as of 1856. It is an inadvertence, and that is brought up here. The same year he registered at the Escambia Hotel as from the "city," leaving out of the count his residence at Captain Northrup's for years, such as it was. Emphasis is laid upon the fact that he registered as from St. Augustine, when it is a proven fact in the case that the family had left

there two years before. And it is with flimsy stuff like this that this great crime is sought to be established.

Now, the learned managers have ventured, I think, once too often to refer to the case of *The People against Owers* in 29 Colorado, 535. That was a quo warranto to oust a judge because he did not reside in his district in compliance with the provisions of the statute of Colorado. He had held office for six years, being elected for that term, and subsequently was re-elected, and had been about eight months upon his new term when these proceedings were taken to oust him. The proceeding was filed in September, 1901. He had been married in 1897 in Washington, D. C.

Shortly after such marriage brought his wife to Denver, living with her at the residence of Doctor Hershey, 1311 Sherman avenue, until April, 1898.

From the date of defendant's marriage to the present time the wife and family of defendant have been in Lake County—

Where his residence ought to have been, his assumed residence—it takes the same place as Pensacola here—

but once, and then for less than ten days, during which time she visited at the home of a friend in Leadville.

He had gone with his wife for five or six months to California, and during all this time, except when the court was in session, he was abiding in Denver with his wife.

Now, the fact was in that case that the Judge was unable to live in such an altitude without serious physical trouble. So he kept away from Lake County as much as he could and was at Denver. Those were the facts of the case, a very much stronger case than the present one. He voted and he campaigned in his canvass for reelection. The only room he had was in the court-house, where he had some furniture. But he lived without paying any rent in rooms that belonged to the county. There was no pretense that his family was there. There was no pretense that he stayed there except at the time he held court. But he had a good reason, he had a good excuse, and that was the effect of the elevation upon his health.

It might be urged with great force, and doubtless it was in that case, that if his health did not permit him to comply with the provisions of the act by which he had his tenure of office he ought to have resigned and let somebody else take it who could comply. But the court did not so see it, and yet that is the case which has been cited here to establish the proposition that a constructive residence will not comply with the provisions of such statutes.

Mr. President, one word only, and that with regard to the private car. There has been nothing proved here whatever to show that Judge Swayne passed upon these accounts as charged. There is no allegation in the articles that he accepted this courtesy or used the car with any corrupt purpose. They stand here entirely without evidence, with nothing but a naked statement of a car conductor that going from Delaware to Jacksonville the Judge said he had ridden in that car to California. But the respondent does not dispute it. It is stated in the answer. The facts are that there were four or five in the party from Wilmington and Washington, two getting on at Washington, to Jacksonville, taking about two days. We do not know how much they ate. It never came before the Judge to determine.

But a much more serious question arises in the California case, for there the Judge provisioned the car, and in it he found property of the company. It consisted of some liquids; how much or what is not disclosed by the testimony. When he left the car he left as much liquid as he found. Did he or did he not? How much of the property of the railroad did he embezzle? How much did he take? That is the magnitude of the question before the Senate on this article of impeachment. De minimis non curat lex. The law does not care about little things. Out of the insignificance of this item has come this charge, and upon it is based the gravity of utterance by learned managers, rich and full with quotations from Scripture, bringing down the prophets and the apostles and all on the unhappy head of the Judge; and the great question, though it happens no wine or improper substance was included in the liquid, is whether he did not find more liquid than he left.

Mr. President, in connection with that, the learned managers have ventured to ask your time and to address their attention and to direct yours in the determination of what are and what are not within the meaning of the Constitution impeachable offenses. And to this contention have we come at last. It has reached from O'Neal and Belden and Davis, who knew not of the private car, for it was at Jacksonville and they lived at Pensacola; and there you have the whole range of this prosecution, from malice to mischievous nothing.

Mr. President, I end as I began. The word I read in the newspapers of the resolution favoring the adoption of articles

of impeachment struck me with a sensible shock, and there has been no moment from then until now that it has not been my duty to give this cause the most thorough consideration and investigation.

There has been no moment when the commanding feature of it has not been the unhappy, the unfortunate, the unjust, the unjustifiable, the dangerous attack from the legislature upon the independence of the Federal judiciary. Its genesis and hatching was in the O'Neal and David and Belden contempt cases. If there has been any wrath, if there has been any moral surging here, it is because of the feeling that lay behind the act of 1831 to curtail the power of the courts summarily to commit people to jail without the verdict of a jury. It is an old contention. It was rife when Jefferson came in as President. It has its long history. But to-day everybody rests in the confidence of the judges of the country; and this power can be left in their hands and will not be abused. It is a wholesome one. It is one that can not be taken from them without great peril to the serious interests of this people. If you can arm a ruffian like O'Neal with his dagger, then you can unloose others at every judge in the land, as you hold over them a weapon even more potent than O'Neal's knife.

This case does not merely affect the respondent. It touches that element of integrity which is self-protection and the power to enforce its judgment—one in the Davis and Belden case and the other in the O'Neal case—without which courts are impotent, and if they have not the power to punish for contempt, they become themselves the object of contempt.

I have absolute confidence, Mr. President, that the Senate, this great tribunal, will not deliver that blow either at the respondent or at the Federal judiciary.

Mr. FAIRBANKS. I move that the Senate sitting in the trial of the impeachment take a recess until 10 o'clock to-morrow morning.

The motion was agreed to; and (at 4 o'clock and 48 minutes p. m.) the Senate sitting for the trial of the impeachment took a recess until 10 o'clock to-morrow morning, February 25.

The managers on the part of the House and the respondent and his counsel retired from the Chamber.

The PRESIDENT pro tempore resumed the chair.

#### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had passed the following bills:

S. 68. An act granting an increase of pension to Martha M. Bolton;  
S. 101. An act granting an increase of pension to James M. Shippee;  
S. 107. An act granting an increase of pension to Joel H. Warren;  
S. 194. An act granting an increase of pension to Chester E. Dimick;  
S. 331. An act granting an increase of pension to Henry E. Jones;  
S. 568. An act granting an increase of pension to Lyman H. Lamprey;  
S. 899. An act granting an increase of pension to John Moulton;  
S. 1299. An act granting a pension to John M. Reimer;  
S. 1660. An act granting an increase of pension to John C. Wilkinson;  
S. 1690. An act granting an increase of pension to James K. Brooks;  
S. 1946. An act granting an increase of pension to Edward J. Palmer;  
S. 1990. An act granting an increase of pension to Catherine Howland;  
S. 2251. An act granting an increase of pension to Edward W. Bennett;  
S. 2304. An act granting an increase of pension to Samuel S. Merrill;  
S. 2456. An act granting a pension to William G. Bradley;  
S. 2692. An act to establish a life-saving station at Nome, Alaska;  
S. 2985. An act granting an increase of pension to William Wallace;  
S. 3075. An act granting an increase of pension to Emma J. Kanady;  
S. 3122. An act granting an increase of pension to Elias Thomas;  
S. 8253. An act granting an increase of pension to Gilbert L. Eberhart;  
S. 3406. An act granting an increase of pension to Amanda D. Penick;

S. 3442. An act granting an increase of pension to William S. Underdown;

S. 3556. An act granting an increase of pension to Theodore P. Rynder;

S. 3864. An act granting an increase of pension to Dean W. King;

S. 3898. An act granting an increase of pension to Noah C. Standiford;

S. 4372. An act for the relief of H. Gibbes Morgan and other coowners of Cat Island, in the Gulf of Mexico;

S. 4551. An act granting an increase of pension to Richard Gable;

S. 4588. An act granting a pension to Hannah B. Nyce;

S. 4638. An act granting an increase of pension to Edwin F. Barrett;

S. 4684. An act granting an increase of pension to Ella M. Ewing;

S. 4918. An act granting an increase of pension to Merida P. Tate;

S. 5118. An act granting an increase of pension to Andrew R. Mark;

S. 5160. An act granting an increase of pension to Harriett P. Gray;

S. 5170. An act granting a pension to Kate M. Smith;

S. 5245. An act to indemnify G. W. Hardy and Joseph Lard, of Scott County, Miss., for homestead land by granting other lands in lieu thereof;

S. 5321. An act granting an increase of pension to William Klingensmith;

S. 5382. An act granting a pension to Sarah A. Morris;

S. 5405. An act granting an increase of pension to John Leary;

S. 5493. An act granting an increase of pension to Charles S. Kerns;

S. 5505. An act granting an increase of pension to William B. Chapman;

S. 5636. An act granting an increase of pension to James Nowell;

S. 5638. An act granting a pension to Susan E. McCarty;

S. 5814. An act granting an increase of pension to Edward D. Hamilton;

S. 5824. An act granting an increase of pension to Benjamin P. Thompson;

S. 5890. An act granting an increase of pension to Andrew Magnuson;

S. 5897. An act granting a pension to Collin A. Wallace;

S. 5907. An act granting an increase of pension to Mary E. Robinson;

S. 5973. An act granting a pension to Jane N. Clements;

S. 6009. An act granting an increase of pension to James H. Briggs;

S. 6010. An act granting an increase of pension to Justus A. Chafee;

S. 6015. An act granting an increase of pension to Thomas Ritchie;

S. 6045. An act granting an increase of pension to Almon W. Bennett;

S. 6075. An act granting an increase of pension to Samuel M. Jones;

S. 6076. An act granting an increase of pension to James B. Clark;

S. 6096. An act granting an increase of pension to Charles Grass;

S. 6099. An act granting an increase of pension to Dempsey Ferguson;

S. 6185. An act granting an increase of pension to Thomas Read;

S. 6354. An act granting an increase of pension to Pierce McKeogh;

S. 6357. An act granting an increase of pension to Alvan P. Granger;

S. 6374. An act granting an increase of pension to Lewis Secor;

S. 6388. An act granting an increase of pension to George W. Hadlock;

S. 6415. An act granting an increase of pension to Daniel Bolen;

S. 6417. An act granting an increase of pension to Lucy F. Cruttenden;

S. 6418. An act granting an increase of pension to Wallace Goff;

S. 6432. An act granting an increase of pension to James Campbell;

S. 6440. An act granting an increase of pension to John F. Wallace;

S. 6441. An act granting an increase of pension to John Seby;

S. 6442. An act granting an increase of pension to William Southwick;  
 S. 6443. An act granting an increase of pension to Terence J. Tully, alias James Fox;  
 S. 6466. An act granting an increase of pension to John W. Kennedy;  
 S. 6467. An act granting an increase of pension to Jonathan Story;  
 S. 6471. An act granting an increase of pension to Frances H. Scott;  
 S. 6472. An act granting an increase of pension to Samuel Hice;  
 S. 6484. An act granting an increase of pension to Ellen Scott;  
 S. 6492. An act granting an increase of pension to Joseph Howe;  
 S. 6515. An act granting an increase of pension to George Murphy;  
 S. 6556. An act granting a pension to Amanda B. Mack;  
 S. 6562. An act granting an increase of pension to George W. Moyer;  
 S. 6571. An act granting an increase of pension to John Van Lear;  
 S. 6576. An act granting an increase of pension to Carrie M. Cleveland;  
 S. 6578. An act granting an increase of pension to Josiah Pearson;  
 S. 6579. An act granting an increase of pension to James W. Foley;  
 S. 6580. An act granting an increase of pension to Melissa E. Nelson;  
 S. 6661. An act granting an increase of pension to Edwin R. Kennedy;  
 S. 6675. An act granting an increase of pension to Halsey S. Curry;  
 S. 6676. An act granting an increase of pension to Albert S. Hopson;  
 S. 6681. An act granting an increase of pension to John L. Kiser;  
 S. 6698. An act granting an increase of pension to Charlotte Johnson;  
 S. 6701. An act granting a pension to Charles B. Spencer;  
 S. 6706. An act granting an increase of pension to Jacob Ormerod;  
 S. 6727. An act granting an increase of pension to Simeon Perry;  
 S. 6743. An act granting a pension to Joseph A. Aldrich;  
 S. 6749. An act granting an increase of pension to Alfred Diehl;  
 S. 6762. An act granting an increase of pension to David Wertz;  
 S. 6804. An act granting an increase of pension to Mary C. Leefe;  
 S. 6847. An act granting an increase of pension to Thomas Dunn;  
 S. 6859. An act granting an increase of pension to Lizzie D. Wise;  
 S. 6896. An act granting an increase of pension to William Gleason;  
 S. 6897. An act granting an increase of pension to James Flanagan;  
 S. 6898. An act granting an increase of pension to Joseph Wood, alias Joseph Rule;  
 S. 6901. An act granting an increase of pension to Allen Thompson;  
 S. 6921. An act granting an increase of pension to George W. Cole;  
 S. 6922. An act granting a pension to Sarah Ferry;  
 S. 6924. An act granting an increase of pension to Richard H. McIntire;  
 S. 6925. An act granting an increase of pension to Laura C. Curtiss;  
 S. 6930. An act granting an increase of pension to Helen S. Wright;  
 S. 6938. An act granting an increase of pension to Patrick W. Kennedy;  
 S. 6939. An act granting an increase of pension to John Coburn;  
 S. 6940. An act granting an increase of pension to George W. Enyart;  
 S. 6943. An act granting an increase of pension to Francis W. Little;  
 S. 6946. An act granting an increase of pension to Judson L. Mann;

S. 6948. An act granting an increase of pension to Bradford Burnham;  
 S. 6966. An act granting an increase of pension to Peter A. Purdy;  
 S. 6989. An act granting an increase of pension to Jacob O. Stout;  
 S. 6993. An act granting an increase of pension to Helen B. Messenger;  
 S. 7019. An act granting an increase of pension to Annie T. Seaman;  
 S. 7021. An act granting an increase of pension to Catharine R. Reynolds;  
 S. 7034. An act granting an increase of pension to John Q. A. Foss;  
 S. 7056. An act granting an increase of pension to Martha Haddock;  
 S. 7064. An act granting an increase of pension to Esther S. Damon;  
 S. 7065. An act to amend section 5146 of the Revised Statutes of the United States, in relation to the qualifications of directors of national banking associations;  
 S. 7066. An act granting an increase of pension to Edmond W. Eakin;  
 S. 7076. An act granting a pension to Susan Hayman;  
 S. 7093. An act granting an increase of pension to William Dawson;  
 S. 7095. An act granting an increase of pension to Lewis M. Duff;  
 S. 7096. An act granting an increase of pension to Amanda H. Burrows;  
 S. 7124. An act granting an increase of pension to Harris Howard;  
 S. 7125. An act granting an increase of pension to Lorenzo D. Cousins;  
 S. 7194. An act granting an increase of pension to John Welch;  
 S. 7206. An act granting a pension to Jane Hollis;  
 S. 7210. An act granting an increase of pension to Charles M. Suter; and  
 S. 7227. An act granting an increase of pension to Josephine E. Bard.

The message also announced that the House had agreed to the amendments of the Senate to the following bills:

H. R. 2531. An act to divide Washington into two judicial districts;

H. R. 7022. An act to amend section 4 of an act entitled "An act relating to the Metropolitan police of the District of Columbia," approved February 28, 1901; and

H. R. 17579. An act to create a new division of the western judicial district of Louisiana, and to provide for terms of court at Lake Charles, La., and for other purposes.

The message further announced that the House had passed with amendments the following bills:

S. 202. An act granting a pension to Harriet E. Penrose; and  
 S. 7077. An act granting a pension to Robert Catlin.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 16986) to provide for the government of the Canal Zone, the construction of the Panama Canal, and for other purposes, asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. HEPBURN, Mr. MANN, and Mr. ADAMSON managers at the conference on the part of the House.

The message further announced that the House had agreed to the concurrent resolution of the Senate to print and bind 1,500 copies of the Executive Register of the United States, 1789 to 1902.

The message also announced that the House had passed the following joint resolutions; in which it requested the concurrence of the Senate:

H. J. Res. 6. Joint resolution relating to the badge of the Army and Navy Union; and

H. J. Res. 52. Joint resolution for the purpose of carrying out the provisions of General Orders, No. 195, War Department, June 29, 1863, for the presentation of medals.

#### ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills and joint resolution; and they were thereupon signed by the President pro tempore:

S. 7103. An act conferring the title of the St. Paul, Minneapolis and Manitoba Railway Company to certain lands in the State of Montana, and for other purposes;

S. 7117. An act establishing that portion of the boundary line between the State of South Dakota and State of Nebraska, south of Union County, S. Dak.;

H. R. 18279. An act to authorize the Secretary of the Interior to accept the conveyance from the State of Nebraska of certain described lands and granting to said State other lands in lieu thereof, and for other purposes;

H. R. 18751. An act to extend the time for the construction of a bridge across Rainy River by the International Bridge and Terminal Company; and

H. J. Res. 217. Joint resolution to return to the proper authorities certain Union and Confederate battle flags.

#### STATEHOOD BILL.

Mr. BEVERIDGE. I desire to call up the motion which I made that the Senate agree to the conference asked for by the House on the statehood bill, and that by unanimous consent the Chair appoint the conferees. I call the attention of the Senator from Alabama [Mr. MORGAN] to it.

The PRESIDENT pro tempore. The Chair lays before the Senate the request of the House of Representatives for a conference on the statehood bill.

Mr. MORGAN. Mr. President, I do not care to ask a vote of the Senate upon this proposition. I supposed when we were upon the impeachment case that nothing would intervene until we got through with it, under the order of the Senate. Am I wrong in that conclusion?

The PRESIDENT pro tempore. The Chair did not understand the Senator from Alabama.

Mr. MORGAN. I supposed that under the order of the Senate we were to progress with the impeachment trial until it was closed; that no legislative business would intervene until we had concluded that work. Am I in error about that?

The PRESIDENT pro tempore. The Chair thinks the Senator is, because legislative business has intervened several times.

Mr. MORGAN. I suppose then the matter of acceding to the request of the House for a conference upon the statehood bill is now before the Senate.

The PRESIDENT pro tempore. It is.

Mr. MORGAN. Will the Chair be good enough to state the precise form of the question?

The PRESIDENT pro tempore. The Senator from Indiana has moved that the Senate insist upon its amendments to the statehood bill, agree to the conference asked by the House, and that by unanimous consent the Chair appoint the conferees on the part of the Senate. That is the pending motion.

Mr. MORGAN. I thought I heard some motion made in the course of this matter that the Senate adhere.

Mr. CULLOM. Insist.

The PRESIDENT pro tempore. If the Senate did adhere, that would end the statehood bill.

Mr. MORGAN. The present motion is that the Senate insist upon its amendments and consent to the conference asked by the House?

The PRESIDENT pro tempore. Yes.

Several Senators addressed the Chair.

The PRESIDENT pro tempore. The Senator from Alabama is recognized.

Mr. ALLISON. The regular order.

The PRESIDENT pro tempore. The Senator from Alabama does not inform the Chair whether he yields or does not yield to Senators who have routine business to present.

Mr. SPOONER. Mr. President—

Mr. PERKINS. I ask the Senator from Alabama to yield that I may make a report from the Committee on Commerce.

Mr. BAILEY. Mr. President, I am compelled to object to yielding the floor to various Senators. There is nothing more important than the matter which the Senator from Alabama is about to address the Senate upon, and the time from now until we adjourn should not be taken up with these other matters by yielding.

Mr. SPOONER. I hope the Senator from Alabama will not yield. I rose for the purpose of asking him not to yield to any Senator.

Mr. MORGAN. I am in a very good humor, and I have no disposition in the world to be contrary or disobliging to anybody, but I have yielded to one Senator for that purpose, and I suppose I shall have to yield to others.

Mr. SPOONER. I would like to have the Senator yield to me, but I do not think he ought—

Mr. ALLISON. I call for the regular order.

The PRESIDENT pro tempore. The Senator from Alabama is recognized, and objection is made to any other business.

Mr. MORGAN. Mr. President, this is a very peculiar bill, and it comes before the Congress of the United States in very peculiar form and under very peculiar circumstances. It seems to be attended with a great many colloquies and con-

ferences, and possible agreements between Senators, and perhaps Members of the House of Representatives, so that I have no chance to keep up with the proceedings, not being at all advised on any occasion of such arrangements as seem to be taking place about the bill. I am not used to legislating by private agreement.

The Senator from California [Mr. BARD], when he took the floor upon the bill some time ago, informed the Senate, and if I remember correctly his remarks, he said that this bill was never read in the House of Representatives.

Mr. BARD. That is true.

Mr. MORGAN. He stated that it was passed under a rule which cut off debate. That could not have taken place, Mr. President, otherwise than through some party caucus, and I wish to remark just here that I do not think either party is justified, in view of the very grave importance of these questions, in taking consideration of the matter, in advance, in a party caucus.

Mr. SPOONER. Does the Senator mean in the Senate?

Mr. MORGAN. No; in the House. The Senator from California [Mr. BARD] referred to it.

I will state further that the newspapers say, and I suppose it is correct, that this conference report has been sent here under the stress of a party caucus in the House. Am I correct about that, or does anyone dispute it?

So we have two party caucuses, one to originate the bill and pass it under a rule without debate, and without its having been read, and after the Senate has delivered upon it for a long time, perhaps as much as two months, it goes back to the House, remains there awhile, and another party caucus is held for the purpose of putting it before the House with a view of asking a conference with the Senate upon the measures involved. But it comes back to the Senate under a caucus decree that the House will yield nothing. I say, therefore, the measure itself comes before the Senate under circumstances that are quite peculiar and to my mind very disagreeable.

I do not know when or where to speak upon the merits of this question, observing the usages that the Senate has heretofore arranged or abided by, unless I speak now on the pending motion that the Senate insist upon its amendments and consent to the conference asked on the part of the House.

I do not wish to intrude my observations upon this great body or to occupy its time for one moment unnecessarily, but I think I have as much right as almost anyone else perhaps to comment upon the situation and to attempt to bring before the Senate, and before the country, what we are attempting to do here under the pressure of the party whip or under the pressure of agreements and arrangements entered into by Senators upon this floor, if there are such things.

Now, I have some very serious objections to this bill in any form whatever. I believe that the Senate, now that it has its opportunity, ought to stop on this bill and go no further with it, and leave it to another Congress to take it up and to consider these great questions without the embarrassment of party pressure, or any other embarrassment, such as has attended the progress of the bill in the Senate.

I very well understand, and the country is not at all ignorant of the fact, that the pressure which has been brought upon this bill in almost every phase that it has assumed has been very great. I do not think I have ever seen a measure before this body in which there has been so much outside pressure to pass it in the several very different forms that have been suggested here by differing personal interests as has attended the progress of this case.

Doubtless, Mr. President, there are gentlemen in New Mexico, gentlemen in Arizona, gentlemen in Oklahoma, and perhaps some in the Indian Territory, who are looking forward to the passage of this bill in any of its several forms as creating quite a series of new offices to be filled. The most important of them are here in the Senate and in the House of Representatives. Next to that the governorships, then after that the officers of the State which may be formed there. These gentlemen being ambitious, no doubt being meritorious also, people qualified for office, feel that this area west of the Mississippi River ought to be put into such shape that it will yield more revenue to the politicians, more offices for gentlemen to occupy and to draw the emoluments.

That is no slight question. That is no slight pressure. I have seen these corridors largely attended by gentlemen who seemed to be extremely eager to get some form of government west of the Mississippi River. It was stated the other day in the debate, on the authority of the Delegate from New Mexico, that the two Houses of Congress, in one form or other, had passed eighteen times a bill for the admission of New Mexico

into the Union as a State. This question has been urged for many years continually. Arizona has not been so persistent, but Oklahoma has recently come into the ring and is remarkably active. She is trying to get statehood out there. She seems to be in a state of great social suffering until we shall supply her with statehood and the offices that attend statehood.

I have not heard that the people of New Mexico, Arizona, or Oklahoma have yet suffered materially in any respect because they have not had statehood.

Statehood, Mr. President, is not a question of right belonging exclusively to the people who occupy a given Territory. It is a question of great public policy, in which every State in this Union has just as much interest as the Territory proposed to be organized as a State, and we ought not to submit ourselves to any such pressure as has been brought upon us by the party whip or by private enterprise, from any direction or from any person, in passing upon a measure that concerns every State in this Union as much as it does the States that are to be formed by this legislation. We have got rights here, and it is our duty to protect our own people, and above everything else, Mr. President, it is the duty of the Congress of the United States to see that in the birth of a new State in this Union no scandal shall attend it and no clamor and no pressure shall force it upon the country in a disgraced attitude.

The bill that was passed by the Senate containing provision for the organization of two States was a better bill than the one that was sent over to us from the House. It was passed after very great consideration, long debate, and without the slightest tinge of party influence. There has been no division in this body upon any political question connected with the bill as we passed it. The Senate, to say the least of it, as far as it has gone has acted as the Senate should, without respect to party ties, or local influence, or the pressure of individuals, without yielding our judgment to the wants, necessities, demands, or hopes of any person whatever, keeping our eyes steadfastly upon our duty not only to that part of the country and those people, but to the balance of the Union.

It is a great question. I am quite sure that there can be no greater question than the admission of a State into the American Union, and there ought not to be a ground of complaint after that great act has been performed as to the manner in which it has been brought about. No State ought to come into this Union attended with reproaches that affect the character of her people or her leading men. They ought to be willing to come in on the invitation of the balance of the States after due consideration and without such extraordinary pressure as has attended this case.

On the face of this bill, Mr. President, that we sent to the House as a substitute for a very much worse bill sent to the Senate by the House, there are some very serious defects. First of all I do not discover that there is any system of local laws, or any system of national laws, to regulate elections in which the Indian tribes are to participate and in which the electoral power is determined entirely by the fact that they are male Indians and belong to a tribe.

I am not aware of any laws in the Indian Territory enacted by the authorities there or enacted by the Congress of the United States that in anywise regulate the holding of elections. Can any Senator point out from any book or authority any law in the Indian Territory that regulates the holding of elections, or any law that prescribes the duties and powers and privileges of voters? Are there any laws there for the returns of elections, for the canvassing of the votes, or any laws to punish men for illegal voting, or for frauds in the conduct of elections? Are there any laws there to protect the ballot box on the day of election against the use of whisky or other intoxicants among the Indians there—Indians, the people who are going to vote upon the question of the constitution and the sovereignty of a State in the American Union?

I have heard of no such laws, and there is no provision in this bill to create such laws. The only provisions are that certain officers shall divide the Indian Territory into a certain number of election precincts or districts, that judges of election shall be appointed, and that those judges shall appoint clerks and other assistants in conducting the election. There is no regulation about how the ballot box is to be cared for, who is to make the returns, or who is to make provision for making the returns.

There never was a question left so entirely barren of legal control as this election that we propose to hold in the Indian Territory. These people who have the right to vote merely because they are males 21 years of age and belong to an Indian tribe, who have never voted before, perhaps, even in their local elections or in any other way—the blanket Indian and the native Indian, as they are called, the full-bloods and

those more intelligent—are all aggregated together and put to work by the Congress of the United States in conducting an election. Does any Senator on this floor expect satisfactory returns to come from an election of that sort among these ignorant people, ignorant entirely of all the duties and functions of citizenship in respect to elections? Do we think that we are complying with any of the requirements of the Constitution of the United States or that we are standing upon the lines of precedent that have been established by our fathers when we confer upon hundreds of thousands of people in the Indian Territory a voting power without providing in any form whatever through local legislatures or by this bill, or any other national law, for the manner of conducting the elections and returning them, and to punish persons for illegally voting, and to punish other persons for corrupting the ballot, and all that?

Now, I submit to the Senate of the United States that this bill needs amendment. Unfortunately it has passed the state of amendment. It can not be amended. A conference committee can not pass upon a question of that kind, which has not been considered in the Senate. It was not considered here nor was anything else considered here except the general provisions of the bill relating almost exclusively to the question whether the people in one of these Territories should have the right to announce their wish to have a condition of joint statehood with the people of another Territory, and matters of that kind.

I will take the liberty, Mr. President, at the risk of being considered prolix, of reading the law that is provided here in this bill on the subject of holding elections in the Indian Territory.

SEC. 2. That all male persons over the age of 21 years, who are citizens of the United States, or who are members of any Indian nation or tribe in said Indian Territory and Oklahoma, and who have resided within the limits of said proposed State for at least six months next preceding the election, are hereby authorized to vote for and choose delegates to form a constitutional convention for said proposed State; and all persons qualified to vote for said delegates shall be eligible to serve as delegates; and the delegates to form such convention shall be 109 in number, 55 of whom shall be elected by the people of the Territory of Oklahoma and 54 by the people of Indian Territory; and the governor, the chief justice, and the secretary of said Territory shall apportion the Territory of Oklahoma into 55 districts, as nearly equal in population as may be, which apportionment shall include the Osage Indian Reservation, and one delegate shall be elected from each of said districts; and the judges of the United States courts in said Indian Territory shall apportion the said Indian Territory into 54 districts, as nearly equal in population as may be, and one delegate shall be elected from each of said districts; and the governor of said Oklahoma Territory, together with the judge senior in service of the United States courts in Indian Territory, shall, by proclamation, order an election of the delegates aforesaid in said proposed State at a time designated by them within six months after the approval of this act, which proclamation shall be issued at least sixty days prior to the time of holding said election of delegates. That the judges of the United States courts in Indian Territory shall, for the purpose of said election, establish and define the necessary election precincts and appoint three judges of election for each precinct, not more than two of whom shall be of the same political party—

This is so humorous as to be almost grotesque—Indians of the same political party—

which judges may appoint the necessary clerk or clerks; that the said judges of election, so appointed, shall supervise the election in their respective precincts, and canvass and make due return of the vote cast to the judges of the United States courts in said Indian Territory, who shall constitute the ultimate and final canvassing board of said election and whose certificates of election shall be prima facie evidence as to the election of delegates, and the election for delegates in the Territory of Oklahoma shall be conducted, the returns made, the result ascertained, and the certificates of all persons elected to such convention issued in the same manner as is prescribed by the laws of said Territory regulating elections for Delegates to Congress.

There it stops. Where is the provision for the Indian Territory? This is the Territory of Oklahoma that has election laws. Then we come to the Indian Territory and no provision was made.

Now, I should like to know how those Indians are to be rounded up and herded and voted on that occasion, and I should like to know what greater liberty the gutter politician would want than to be out there with his bottle of whisky and his pipes and tobacco and his other inducements, his red ribbons, and the like of that, to induce those electors who are to become sovereign citizens of the United States by their own vote and establish a constitution by electing themselves or somebody else to that convention. I should like to know what need such a politician would have of a better field of operations than that.

Mr. President, the scandal that will come out of that election will adhere not merely to the State of Oklahoma, but it will adhere to the people of the United States for years and years to come. There never was such a field as that opened for fraud and compulsion, and never one that will be so eagerly occupied by contesting and controverting politicians.

I thought I had some papers here that I wanted to use in this little discussion, but this matter has been jumped up on us in such a way that we are obliged alternately to swing off into the

great court of impeachment and the greater court of creating States, and my papers seem to have gotten a little out of reach. But I will get them in time, Mr. President.

I wish to inform the Senate, if they have forgotten about Arizona Territory, something as to the method of conducting elections in the most enlightened parts of the United States of America, and after we have seen from official reports what has been done and can be done and may be done in reference to elections in the best organized States in the Union, we can, perhaps, form some contemplation of what will take place in the Indian Territory, where there is no law to regulate elections, when those people have the right to vote the State into the Union by electing delegates to adopt a constitution, and by ratifying that constitution after it is adopted.

Mr. President, I could not be compelled by any consideration to read these statements that I am about to present in any tribunal where I was not absolutely forced by my conscience to do it. I would not read this in a political debate, because the other nations of the earth would seize upon what is said here in the Senate of the United States to bring reproach upon our institutions and our sovereign States and their representatives; but I feel bound to do it on this occasion so as to show what our very best communities are doing in the way of elections, and by that means, if possible, to show what must necessarily occur amongst thousands of ignorant Indians and thousands of white men, who, I am afraid, are not ignorant in respect of vicious habits and practices. The most irregular, incomplete, and insufficient provision for holding an election that was ever enacted by any legislature or any assembly in the United States we have here in this act.

Now I will invite attention to the extreme folly and danger of holding elections in the absence of any laws to regulate them and to protect ignorant Indian voters against election sharps, by quoting from election experiences in some of the most enlightened States in the Union.

Governor Garvin, of Rhode Island, found it necessary in addressing the legislature of that State as late as March, 1903, to indulge in these comments. I shall not read more of them than are necessary to explain the exact situation in Rhode Island.

This class ruled till well down into the eighties, and its leader, Senator Henry B. Anthony, "discovered" and promoted NELSON W. ALDRICH, his successor, who represents the "system," and Gen. Charles R. Brayton, the boss who developed and directs it.

This is the comment of a magazine writer. He goes on to say—I omit some of his remarks because they are not friendly or agreeable to gentlemen for whom I have great respect—

The corruption of the voters of the towns of Rhode Island is so ancient and so common that Governor Lucius F. C. Garvin addressed in March, 1903, a "Special message concerning bribery in elections to the honorable the general assembly," etc.

"GENTLEMEN: \* \* \* That bribery exists to a certain extent in the elections of this State is a matter of common knowledge. No general election passes without, in some sections of the State, the purchase of votes by one or both of the great political parties. It is true that the result of the election may not often be changed, so far as the candidates on the State ticket are concerned, but many assemblies occupy the seats they do by means of purchased votes.

"In a considerable number of our towns bribery is so common and has existed for so many years that the awful nature of the crime has ceased to impress. In some towns the bribery takes place openly; is not called bribery, nor considered a serious matter. The money paid to the voter, whether two, five, or twenty dollars, is spoken of as 'payment for his time.' The claim that the money given to the elector is not for the purpose of influencing his vote, but is compensation for time lost in visiting the polls, is the merest sophistry and should not deceive any adult citizen of ordinary intelligence. It is well known that in such towns when one political party is supplied with a corruption fund and the other is without the party so provided invariably elects its assembly ticket, thus affording positive proof that the votes are bought and the voters bribed."

That is in the highly cultured and enlightened State of Rhode Island, situated in the very heart of the intelligence, and, I might say, the excellence of the social organisms of the United States. I simply want to ask the Senate of the United States upon that proposition if men in Rhode Island will resort to practices of this kind, so that they will go openly into the market and buy votes from \$5 to \$20 a vote upon the pretext that they are paying the voter for his time, what are we to expect when enterprising politicians, for the purpose of building up their own fortunes and selecting a destiny for themselves, visit the Indian Territory when this election is to be held? What are we to expect if we leave them without a single guard to punish any man for any crime he may commit there in reference to the ballot box and without any legislative provision whatever in the Indian Territory to regulate voting or the return of votes?

Mr. President, I am entirely satisfied that the honorable Senator from Indiana [Mr. BEVERIDGE], who is conducting this bill and has conducted it with so much ability, would not, under any

conditions, become a party to any proceeding for the purpose of debauching the electorate or of having false returns from any election whatever. I exonerate the Senator from any such purpose in the unhappy provision that he has made in this bill for conducting the elections in the Indian Territory. At the same time, Mr. President, he knows very well that the governor of his State, in a recent message, has exposed the practices in that splendid State in such a way as that the country can not deny, can not possibly set aside the fact, and can not refuse to see that when elections are held in the Indian Territory for the purpose of organizing the State government, fraud of every kind will be practiced, and that we will be here considering those questions at the next Congress, provided the President of the United States refuses to connive at them, for we put the power in his hands to do so.

Governor Durbin, in his message of January 5, 1905, to the Indiana legislature, wrote as follows:

I believe that I speak for the vast majority of the people of this State when I say that the time has come for the application of drastic remedial measures to the plague of corruption which is fastening itself upon our politics to an extent appalling to those who look forward to the ultimate in the sort of progress that has been made along these lines in recent years. We have in Indiana advanced legislation for the protection of the purity of the ballot, but the statistics of political debauchery in this State for the year 1904, if it were possible to present them, would be nothing short of astounding. And in this the Indiana situation is not peculiar.

In intelligence, in wealth, in morality, her citizenship averages well with that of any other State in the Union, though there may be an unusual degree of activity in our political contests, which in itself is healthful. But I am informed by unquestionable authority that in a single county of this State, casting in 1902 a total vote of little more than 5,000, there were in the last campaign nearly 1,200 voters regularly listed as purchasable, and that \$15,000, raised by assessment of candidates and otherwise, was spent by the contending political parties in the effort to control that county. This county is recognized as one of the plague spots of the State from the standpoint of political debauchery, but the situation there is rivaled in other counties, and wherever it exists it represents only the goal, and this not the ultimate goal, toward which every community in this State will trend unless remedial legislation be effected.

#### POLITICAL CORRUPTION LIKE LEPROSY.

The striking fact about political corruption is that it is as much a communicable plague as leprosy; that every year, in any community where the vote-buying system has become prevalent, there is a growth in the number of those who are ready to make merchandise of the suffrage. Within the most recent years there is appearing in connection with this evil a phenomenon vastly more significant than the sale of votes by ignorant and vicious persons inherently lacking in self-respect and tempted to the sale of the franchise by poverty, and this is the astounding disposition manifested by many men fairly prosperous to look upon a vote as a legitimate object of barter and sale. Instances have been brought to my attention during the last few weeks where in contests for the office of township trustee votes have commanded as high as \$25 or \$30 each, and where citizens of substance have prostituted their honor for that price.

It is unnecessary in this presence to portray the results which inevitably must follow the adoption of a let-alone policy to this menacing condition of affairs. The prostitution of the franchise implies the pollution of the very fountain head of republican government. To palter with mere questions of expediency while a menace of this sort is imminent is like repairing a window while the whole house is on fire. Our present need is legislation framed in the light of a clearer conception of the real enormity of the offense involved in the purchase or sale of a vote and of the fearful consequences which must follow an extension of the system of suffrage corruption toward dominance in our elections.

If Governor Durbin has given us a true account of the unfortunate situation in Indiana—that great and splendid State which has such a magnificent community, that sends such splendid men here to represent her in both Houses of Congress and in Presidential offices—if that is true in regard to that enlightened State, what will be true in regard to the Indian Territory, when you put up the prize there of offices in Congress and all the different State offices? What will take place, and what provision is made in this bill to prevent or to correct the frauds, bribes, and coercion that will control the elections? None whatever so far as the Indian Territory is concerned. There are some laws in Oklahoma, but I presume very few of us have examined them to see how far they would regulate and control elections, so that they may be honest and decent. Are we going to admit a State, under such elections, one-half of which in respect of area and population is filled most largely, and perhaps in a large majority, with Indians who have no knowledge of public affairs or of the conduct of the affairs of government?

Are we going to prepare to admit a State under those circumstances, and allow it to elect delegates and form a constitution and send it here for the approval, not of this Congress or any subsequent Congress, but of the President of the United States? Mr. President, I solemnly protest that the Congress of the United States can not afford to establish this precedent in regard to the admission of a State into the Union. That these difficulties will take place of course is only to be conjectured, but who doubts that they will occur, and where is the remedy?

I have read from this bill in respect of the returns that are to be made of these elections. A meeting of the convention of delegates will take place; then they are required to act upon our suggestions, and upon our compulsion also, in regard to what their constitution shall contain. There will be delegates in that constitutional convention, in all probability, Mr. President, who can not read the Constitution of the United States, and who will go there because they stand pledged to support some man for the Senate or for the House of Representatives or for governor.

There are others—many others—who will vote at these elections upon the argument that the Congress is putting up a vast sum of money here for school purposes and for other purposes—a richer endowment in actual money than has ever been made to a State in the American Union—and it will be said to them, "If you will vote for this constitution and vote for these delegates, your State and your people will get this money." It is a bribe for those people, whether intended so or not, and I am very much afraid it is so intended. That is the effect of it, no matter what the purpose may be.

Such an electorate in such a country, in the absence of law and of all possible control, set themselves to work as if they were the sovereign owners of the powers of government that belong to the people of the United States, to ordain for themselves and for all posterity those powers that are so immensely important, and ordain for themselves also a so-called "equality" with the other States in the American Union.

This bill, Mr. President, is fatally defective in not making some provision on that subject for those in the Indian Territory. You can not get over it in a conference; you can not get rid of it. They have no laws there to regulate voting, to punish fraudulent voting, and the like of that. You have got to enact them here, if they are to be enacted at all, and a conference committee can not enact them, for they will not be before the conference committee.

The people of the present Territory of Oklahoma and the present Indian Territory are to hold their separate elections under separate laws, separate regulations, separate returning boards, and the aggregate result is to be made up in a certificate by them, and, when ascertained and certified, the delegates chosen are to attend a constitutional convention at a place named in this Territory. They go there and they are required to pass certain organic and irrepealable ordinances as one of the conditions of their being admitted into the Union.

They are required to adopt a constitution also that contains certain express provisions before they can be admitted. After all that has taken place these same electors can proceed to elect Representatives in Congress and members of the legislature, and the legislature can elect Senators. There will be a complete equipment of public officers to fill every office to be created by this convention, and every office most likely will have its incumbent selected before the office is created. [Laughter.]

The strong man, the smart man, the man who has been corrupting the ballot in Rhode Island and Indiana will be there. The men who buy votes at \$25 a head will go out there and buy them for 25 cents, or such a matter as that. The men who are contending, as the honorable Senator from New Hampshire [Mr. GALLINGER] is contending, for the purity of that country and for its freedom from all intoxicating influences will be there with barrels and jugs of whisky for the purpose of intoxicating those Indians and conducting in their own way that revel that will be called an "election." They will all be there.

It will not do to wait, Mr. President, to put a temperance law in the constitution of Oklahoma after the election. If you want to preserve that State and those people, you had better pass the law now; you had better have a law that if any man attends upon an election there, or within three or four days of an election, at any voting place, or any other place, with a bottle or a jug or a keg of whisky or beer for the purpose of accommodating his neighbors and being "a hail-fellow well met" with those Indians—you had better provide that such a man as that shall be sent off to the penitentiary as soon as he performs that service for himself and his country. You had better pass a law here now to do it; otherwise the proposition of the honorable Senator from New Hampshire will fall entirely, because the people will all be drunk until it is put into effect, and perhaps always afterwards. [Laughter.]

Now, Mr. President, I want to examine this bill with reference to a subject still more important. After these elections of which I have been speaking are held and the returns are made another proceeding is to take place. I will read from section 4 of the bill, and, in order to get a full view of the situation, I will read it all:

SEC. 4. That in case a constitution and State government shall be formed in compliance with the provisions of this act the convention

forming the same shall provide by ordinance for submitting said constitution to the people of said proposed State for its ratification or rejection at an election to be held at a time fixed in said ordinance, at which election the qualified voters for said proposed State shall vote directly for or against the proposed constitution, and for or against any provisions separately submitted.

There is still no law required to hold elections, and the constitution, after it is adopted by this convention, is referred back to this round-up of full-blood, blanket Indians, to be ratified by them by a vote.

The returns of said election shall be made to the secretary of the Territory of Oklahoma, who, with the chief justice thereof and the chief justice or senior judge of Indian Territory, shall canvass the same—

There they get the combined Federal authorities, Territorial authorities, and Indian authorities altogether in one board—

and if a majority of the legal votes cast on that question shall be for the constitution the governor of Oklahoma Territory and the judge senior in service of Indian Territory shall certify the result to the President of the United States, together with the statement of the votes cast thereon, and—

What law are they to go by in making these returns, and how are they going to count and ascertain the votes? If frauds are perpetrated how are they going to purge the polls and get rid of them? They must certify to the President of the United States the final adoption of the constitution and all the organic laws we require them to put into that instrument—an irrepealable, organic law.

And upon separate articles or propositions and a copy of said constitution, articles, propositions, and ordinances. And if the constitution and government of said proposed State are republican in form, and if the provisions in this act have been complied with in the formation thereof, it shall be the duty of the President of the United States, within twenty days from the receipt of the certificate of the result of said election and the statement of votes cast thereon and a copy of said constitution, articles, propositions, and ordinances from said commission, to issue his proclamation announcing the result of said election; and thereupon the proposed State of Oklahoma shall be deemed admitted by Congress into the Union, under and by virtue of this act, on an equal footing with the original States from and after the 4th day of March, 1906.

Mr. President, suppose the returning officers should become disgusted with the job we impose upon them of holding the election and certifying the result, both as to the election of delegates to the convention and as to the vote upon the ratification of the constitution. Suppose those officers should report to the President of the United States that the frauds and corruption attending those elections were of such vile character that they could not afford to certify that any election really had been held. Theirs is the return upon which the President may act. Such a return defeats any action by him. He is not required to ascertain, he is not authorized to ascertain, whether the election returns are fraudulent or not. If a certain return is made to him he must act on it and issue his proclamation. We command him to do it, and he has to do it, unless he should take it in his head in some obstinate moment not to do it, although we had commanded it, which I think would be very likely to be the result, particularly if the matter did not result entirely according to his views of what ought to be done.

There is one category in which this whole scheme would go down, because those conscientious judges and governors could not make a certificate that an honest election had been held there, or because the President of the United States, if he was informed by public clamor that such a thing had taken place, would refuse to issue his proclamation.

There may be another intervenor there. Any person concerned in the election would have the perfect right before the President had proclaimed the admission of that State into the Union, by a proceeding in some court—I will not say where, but I know there are courts open for that purpose—to issue a prohibition or a mandamus or some other writ necessary to stop the giving of the certificate, upon the ground that the election had been like one of those described by Governor Durbin, of Indiana, or Governor Garvin, of Rhode Island, where votes were sold for one to twenty dollars apiece.

Some court would have the right to interpose its arm, the arm of justice, and say to the returning officers, "These matters that you are certifying are the result of corruption, and you must not certify them;" or if accusation were brought against the returning boards themselves, the court would have the right by injunction to prevent the return. Here goes all your statehood bill—all of it—because the preparatory legislation to the admission of a State into this Union is so defective, and so beset with difficulties, and the elections so overwhelmed with fraud that the arm of justice must be interposed to prevent the result.

Mr. President, this brings us up against the real question upon which the Senate ought to pause, and never take another step to perfect this bill in its present form, and that is with respect to the power of the President of the United States, which is sought to be conferred upon him by this proposed act, to make

a proclamation admitting a State into the American Union on the 4th day of March, 1906. I will take up the President's connection with this subject a little in detail in order to illustrate exactly my own attitude about it.

Suppose we should send this bill to the President of the United States as we passed it through the Senate and the President should conclude, as I think he would conclude, that it was his constitutional duty to veto it. The President by the exercise of the veto power in that case would of course keep two States out of the Union. Does the President's veto power in any case whatsoever that can be named by any Senator on this floor extend to keeping a State out of the Union which Congress has voted into it? That tests the whole question in respect to the President's power to participate in this act of the admission of a State into the Union.

Suppose the President should send his veto here and two-thirds of the Senate and of the House of Representatives should vote it down. That would still leave the bill to stand. Suppose they did not vote it down. That would not defeat the bill. What would prevent both of the Houses, by a concurrent resolution, in one hour's time after that bill had been thus disposed of, or even before it was disposed of, to vote the Territory of New Mexico or the Territory of Oklahoma into the Union upon the constitutions that they might adopt at the constitutional conventions?

We can waive defects and difficulties and defects in constitutions if we choose. There are States in the American Union, among the greatest of them, that had not formed constitutions by authority of Congress before they were admitted as States into the Union. There are California and Texas and other States. The principle is perfectly well settled. Those States never could have been admitted into the Union if it required a preparatory act of Congress to admit them. I mean a legislative act; an act of Congress passed under the powers derived from the Constitution which confer legislative power upon these bodies.

Now, if the President can not defeat the admission of a State into the Union against the will of Congress by the veto of the bill, what power has he?

If we were to pass a law here that contained nothing in it except the preparatory provisions for the admission of a State into the Union, it would be a legislative act, and the President could prevent its becoming effective by his veto; but when we go beyond that bound and come to the final act of admission, it is just as separate from the powers of the President as the powers of the Senate as a court of impeachment are separate from the legislative powers we are exercising this moment. As a legislative body the Senate could not listen to the impeachment proceedings against Judge Swayne. It has to organize itself into a court for that purpose, under a special provision of the Constitution. No less distinct are the duty and right and power of the two Houses by their concurrent action to admit a State into the Union, the President having no right whatever to interfere.

The power in the Constitution to admit States into the Union is given to Congress as a peculiar and separate jurisdiction, just as the power to declare war is given to Congress, as the power to make treaties is given to the President and the Senate, as the power to submit amendments to the Constitution of the United States is given to the two Houses of Congress, and as the power to control the counting of the Presidential votes is given to the two Houses of Congress. And a President of the United States to whom the twenty-second rule, I think it is, or the twenty-first, was sent—a concurrent rule of the two Houses—for his approval, declined to approve it and kept it for ten days, so that it might become the law free from any objections on any account whatever, and returned it to the House in which it was originated, stating, "I have no power to participate in this act, and I return it." The older Senators here remember that message. I can not quote precisely the message at this moment, and I have forgotten whether it was a message of General Grant or of Mr. Lincoln, but I think it was of General Grant.

There the President of the United States, recognizing that he had no right as President to participate in the act of counting the votes of his successor—he himself was elected the successor—refused to touch that resolution and sent it back to the House, in which it originated, because he did not have any power as President to participate in it.

There are certain powers that belong to the Congress of the United States which are as distinct from its legislative powers as the legislative powers of Congress are distinct from those of the State of Maryland. One of these and one of the most conspicuous of these is the power to admit new States into the Union.

No President can be permitted in any form or at any time or on any occasion to participate in the act of admission. He may participate in preparatory measures that the Congress of the United States may think ought to be the law for the purpose of preparing the people for admission into the Union, but the act of admission can never be by a Presidential proclamation or a Presidential act. It has to be by the concurrent act of the two Houses, and the moment that concurrent act of the two Houses is passed admitting a State into the Union, that moment the State is admitted into the Union, and no motion to reconsider can be in order. It is a final tribunal making a final order or decree, and the legislative tribunal has lost its power to correct it at any time thereafter.

The act of admitting a State into the Union is the very highest act of sovereignty. It is an irrevocable act and the power to perform it is conferred exclusively upon the House and Senate.

Here not only do we confer it upon the President, but we fix various ifs and ands. If that thing has taken place and the other thing has taken place, according to his judgment, the President may issue his proclamation. Must he not first decide that these conditions precedent have taken place? Can he issue his proclamation under the authority of this act unless those conditions precedent have been performed?

If he has any doubt as to whether they have been performed, can he not withhold his proclamation and keep the State out of the Union, even after the 4th of March, 1906? Are the conditions to be ascertained by the President conditions of fact upon which he can issue his proclamation and admit or refuse to admit a State into the Union? They are, at most, conclusions of law.

Mr. President, if we pass this bill the Senate of the United States—I was about to use an expression I will not use—the Senate of the United States will stand in the eyes of this world as having surrendered its most important functions into the hands of the President of the United States at the bidding of a party caucus. The President of the United States ought not to occupy such a position, and I do not believe he ever will. I have too high an opinion of him as a man to suppose that a party whip can be laid across his shoulders and he can be forced to exercise a power that does not belong to him under the Constitution, because it is demanded of him by certain leading men in his party. I do not believe that, Mr. President.

Not only is this so in respect to the conditions precedent which must be performed before he can issue his proclamation, but the proclamation itself relates to conditions that are to arise at a future time. Suppose another Congress meets here after the President's proclamation—

Mr. FORAKER. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Alabama yield to the Senator from Ohio?

Mr. MORGAN. Certainly.

Mr. FORAKER. Will the Senator allow me to make an inquiry of him? It is whether he desires to conclude his very able and interesting and instructive speech at this session of the Senate, or would he be willing to conclude it at some other time?

Mr. MORGAN. I would be very happy indeed to yield to a motion to adjourn, because I am, of course, very tired. I have had a hard day's work here in other directions.

Mr. ALLISON. Is it not possible to have an arrangement whereby this matter may be gotten out of the way?

Mr. MORGAN. What is the suggestion?

Mr. ALLISON. Can not the conferees be appointed before we adjourn to-night?

Mr. MORGAN. Probably they can, but we will have to remain here a while longer.

Mr. ALLISON. I am merely inquiring of the Senator. Our time is very short, and there are a good many things which we are obliged to do or leave undone. I do not know whether it is wise or otherwise to deal with this question. The Senator from Alabama seems to think this bill ought not to pass in any form.

Mr. MORGAN. I do.

Mr. ALLISON. I had hoped that we might get a conference and possibly remedy such defects as are obvious, at least, and get the bill out of the way for the moment.

I agree with the Senator from Ohio. Some of us were here last night until 11 o'clock, and we would like a little rest to-night if possible. I hope the Senator—

Mr. BAILEY. Will the Senator from Iowa permit me to inquire if it is not true that the bill with all these objectionable features in it passed the Senate without a dissenting vote, so far as the Record shows?

Mr. ALLISON. I so understand. I do not wish to interfere in any way with the instructive speech of the Senator from Alabama, but I had hoped we could get this measure out of the way to-night. There are now three appropriation bills on the Calendar, which ought to be disposed of. The impeachment matter is likely to take up to-morrow, and we have very few days left.

Mr. MORGAN. I was about to state this proposition to the Senate: Suppose the President proclaims the admission of these States into the Union, after the returns have been made to him and they are satisfactory to him, to take place on the 4th day of March, 1906. Congress will be in session then. It will meet in December, 1905. Has not that Congress the right to repeal this law? Suppose Congress should take it into its head after all these frauds have developed that it was its duty to repeal this law. Has not the Congress the right to repeal it and thereby destroy the effect of the proclamation, which is that all the conditions have been performed and that this is a State of the Union, to take its place in the galaxy on the 4th day of March, 1906? Do we not see the conditions to which we are exposing ourselves and the country by this unfortunate legislation?

We ought not to pass this bill in any form, but more particularly we ought not to pass it with this contingent clause in it for the admission of the States on March 4, 1906. Up to that time, of course, they must remain in statu quo as Territories, I suppose, although they will have all the organization of a State government; the elections of governors will take place, of members of the House, of members of the Senate. They will be coming here for admission to the floor of this body on the 4th of March, 1906. They will be all prepared to enter at once into these Chambers as representatives of a State when the State enters the Union.

Now, if Congress between now and then should fortunately tear this whole business up, where would we be left? In what condition would the Senate of the United States be in in respect to its action upon a measure of this kind?

Senators, we can not afford to do that. We can not afford to take that ground. We have to stop right where we are or else we have to run the risk of great disappointment. I will be a member of this body for two years to come, if I live, and will have to make due inquiry into the facts, however they may be decided by the President.

Mr. SPOONER. Will the Senator permit me?

Mr. MORGAN. Certainly.

Mr. SPOONER. I have the profoundest respect and the greatest admiration for the Senator, as he knows. Does not the Senator remember that this power, precisely, was conferred upon the President of the United States as to the admission of the Dakotas and Montana?

Mr. MORGAN. Yes; and several others.

Mr. SPOONER. And Washington and other States.

Mr. MORGAN. About seven. I remember all that.

Mr. SPOONER. It is not a power conferred upon the President to admit a State. That power, of course, we can not confer upon the President, but it is the power to find the fact and issue the proclamation; and when he proclaims the fact, the act of Congress says the Territory shall be admitted into the Union upon equality with the other States.

The Senator from Alabama would not say that if this act were passed and the President had in accordance with its provisions found and proclaimed the fact, and, by operation of law, the Territory had become one of the States of the Union, it would be within the power of any subsequent Congress to eject it from the Union.

Mr. MORGAN. It would not be in the Union between the date of the passage of the bill and the 4th of March, 1906. It can not get into the Union until the 4th of March, 1906. It is shut out expressly by this act.

Mr. SPOONER. It would have been admitted to take effect—

Mr. MORGAN. But for some act of Congress that prevented it. Who can deny to Congress the right to repeal the law after the President has made his proclamation? No, it is not like the case passed upon by the Supreme Court of the United States where the President was given the right to ascertain if certain conditions in respect of taxation by foreign countries existed, whereupon the rate of tariff due to the United States was raised or lowered according to the requirements of the statute.

This is the exercise of a power that is supposed to be a constitutional power of the President of the United States, and the President is not made a judge of facts and conditions.

Mr. SPOONER. If the Senator will permit me, the President was made the judge of conditions in all those other cases.

Mr. MORGAN. No; they were facts.

Mr. SPOONER. But if the Senator will permit me, the question as to whether the constitution was republican in form was left to the determination of the President.

Mr. MORGAN. Well, Mr. President, another answer to the honorable Senator, who is candid and at the same time very adroit—

Mr. SPOONER. I do not mean to be adroit.

Mr. MORGAN. I know you do not; but you are, in spite of it. Another answer is this: The Congress of the United States, in prescribing the conditions which shall take place before the State can be admitted into the Union and in prescribing to the President the authority which he is to exercise in judging of these conditions and facts, is providing for the execution of its own law—a statute that it has a right to pass as a Congress. But the two Houses of Congress can not by a concurrent resolution say that the President of the United States, at his will and pleasure, or on his approval of such resolution, shall admit a State into the Union. The two Houses, when they are acting upon the question of the actual admission of a State into this Union, act finally and exclusively on a constitutional power that is conferred upon them of a peculiar character, separate and entirely free from the executive function and the legislative function.

Now, the two Houses concurrently could not prescribe the conditions upon which the President of the United States can admit a State. But the legislature of the country can provide by law for the preparation of these people so that they can come in as States. His veto extends to such preparatory legislation, but not to the final act of admitting a State into the Union.

Conditions of which the President may judge as the agent of Congress are not such as enlarge his powers under the Constitution. The President has no connection with the subject of admitting States into the Union under the Constitution further than a participation in the preparatory legislation to enable the Houses to reach the final result, which can be decided only by the two Houses of Congress.

Mr. FORAKER. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Alabama yield to the Senator from Ohio?

Mr. FORAKER. I understood the Senator to say a while ago that it would not be displeasing to him to yield for a motion to adjourn. In view of the lateness of the hour and the many other engagements we have, I will make a motion that the Senate adjourn.

Mr. SPOONER. I hope the Senator from Ohio will withhold that motion. I wish to make an appeal to the Senator from Alabama.

Mr. FORAKER. I will withhold it for a reasonable time.

Mr. SPOONER. I have cared nothing particularly about this bill. I think the people of Oklahoma, the million and a half people there, ought to be admitted into the Union. I differed from my friend from Alabama as to New Mexico. But every objection or criticism which the Senator has made to this bill—and some of them seem to me to be well founded—was in the bill when it came from the House and in the bill when we passed it. All the provisions in regard to elections were in the bill. This is a request from the House of Representatives couched in respectful terms and in the usual form for a conference upon the disagreeing votes of the two Houses.

Now, the Senator from Alabama has been here a great many years as a Senator—much longer than I have been or ever will be. I wish to ask the Senator from Alabama if he has ever known the Senate to refuse to grant a request of the House for a conference upon objections to the bill which were provisions in the bill when the Senate passed it?

Mr. MORGAN. I do not know that I ever did.

Mr. SPOONER. I ask the Senator—

Mr. MORGAN. I am not arguing on precedents now; I am arguing on the Constitution.

Mr. SPOONER. If the Senator appeals to the Constitution I give it up.

Mr. MORGAN. Mr. President, I appeal to it, I stand on it, and will do so whenever it is invaded, for such is my oath of office.

Mr. FORAKER. Mr. President, I move that the Senate adjourn.

The PRESIDENT pro tempore. Will the Senator from Ohio withhold that motion for one moment? There are some matters on the table which the Chair desires to lay before the Senate. There is on the table House bill 14749, the Canal Zone bill, with the action of the House of Representatives disagreeing to the amendments of the Senate and requesting a conference on the disagreeing votes of the two Houses.

Mr. KITTREDGE. I move that the Senate insist—

Mr. FORAKER. I move that the Senate adjourn until 9.50 to-morrow morning. I will withhold it, however, as the Senator from South Dakota has risen.

Mr. KITTREDGE. I move that the Senate insist upon its amendments and accede to the request of the House of Representatives for a conference, and I ask that the Chair appoint the conferees.

Mr. BAILEY. Mr. President, is that motion in order?

The PRESIDENT pro tempore. The Chair does not know why it is not.

Mr. BAILEY. I think I shall have to object to any more conferences here, or any agreement regarding them, until we have a conference upon the right of these people to enjoy their own form of government.

The PRESIDENT pro tempore. The Senator from South Dakota moves that the Senate insist upon its amendments to House bill 14749, and accede to the request of the House for a conference.

Mr. BAILEY. Mr. President, I have a word to say upon that motion.

Mr. MORGAN. Mr. President, I hate very much to disturb the equanimity of my friends. I am very partial to my friends, and love them very dearly. I hate very much to keep the people of Oklahoma out of the enjoyment of the great happiness and blessings that they are anticipating. I think they are the happiest lot of people now that I know of. I think they have got as much out of this Government in the way of free land and support of their institutions as any set of men in the United States or in the Territories ever got. I am not particularly sympathetic, as my friend from Texas is, with the people of Oklahoma, nor do I want to confer upon those Indians in that country all the duties, rights, and powers of sovereign citizenship in the United States. I am not in favor of doing that.

Mr. SPOONER. They get it under existing law.

Mr. FORAKER. Mr. President, I move that the Senate adjourn.

The PRESIDENT pro tempore. The Senator from Ohio moves that the Senate adjourn.

Mr. BAILEY. The Senator from South Dakota made a motion, as I understood it, and I took the floor to discuss that motion.

Mr. MORGAN. I was on the floor, Mr. President.

Mr. BAILEY. If the Senator from Alabama has the floor, of course I yield to him. He did not yield the floor?

Mr. MORGAN. No; I did not. I never thought of it and was not asked to do it.

Mr. BAILEY. I am not asking the Senator from Alabama to yield to me now. I have the floor on a question of order.

The PRESIDENT pro tempore. The Chair simply thinks he has a right, however, under the rule to lay any communication from the House before the Senate at any time.

Mr. BAILEY. The Senator from Texas does not question the right of the Chair to do that. The Senator from Texas only took the floor on the motion or, if it shall be called, a request of the Senator from South Dakota that conferees should be appointed or that the Senate should insist on its amendments. That is a motion upon which any Senator is entitled to be heard.

The PRESIDENT pro tempore. Undoubtedly.

Mr. MORGAN. Under the circumstances I do not attempt to hold the floor against the right of the President of the Senate to take up the question of a conference. This is one which we are discussing now upon which issue is joined, and I yield to the Senator from South Dakota for the privilege of presenting the conference matter.

Mr. FORAKER. I had the floor and made a motion to adjourn. I was asked to withhold that motion for a moment. I agreed to do that, but I now renew it.

Mr. BAILEY. I make the point of order that the Senator from Alabama can not yield the floor to the Senator from Ohio without unanimous consent.

Mr. FORAKER. I claim that my motion is in order, as I had not yielded the floor.

Mr. BAILEY. I did not understand the Senator's point of order.

Mr. FORAKER. I had the floor and I was asked to yield for a moment that the Senator from South Dakota might make a motion. I said that I would withhold my motion for a moment. I had already made it and now I renew that motion. I suppose that motion is pending.

Mr. BAILEY. I make a point of order.

The PRESIDENT pro tempore. The Senator from Alabama had the floor and yielded to the Senator from Ohio.

Mr. BAILEY. The Senator from Texas makes the point that a Senator having the floor can not yield it if there is objection, and the Senator from Texas respectfully refers the Chair to a decision which the Chair made in this very kind of a case against the Senator from Texas.

Mr. FORAKER. The point of order I make is that no objection was made until after the floor had been yielded and I had made the motion.

Mr. BAILEY. I think that point of order is probably well taken if the Senator had the floor.

Mr. FORAKER. I renew my motion.

The PRESIDENT pro tempore. The Senator from Ohio moves that the Senate adjourn—or that when it adjourns it adjourn until 9.50 a. m. to-morrow morning? ["No!" "No!"]

Mr. FORAKER. I make it 9.50 because Senators sitting about me have requested me to make a motion to adjourn until that hour in order that there may be a meeting of the Senate before the court of impeachment convenes at 10 o'clock.

Mr. BAILEY. Mr. President—

The PRESIDENT pro tempore. The Senator from Ohio moves that when the Senate adjourns it adjourn to meet at 9.50 a. m. to-morrow.

Mr. BAILEY. I addressed the Chair. I believe the question to fix a day or an hour to which the Senate shall adjourn is debatable.

Mr. GALLINGER. Mr. President, I think it is not debatable.

Mr. KEAN. It is not debatable.

The PRESIDENT pro tempore. It is not debatable.

Mr. BAILEY. It is not a motion for a recess?

The PRESIDENT pro tempore. This is not a motion for a recess. It is a motion that when the Senate adjourns it shall be to meet at 9.50 a. m. to-morrow. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORAKER. I move that the Senate do now adjourn.

Mr. BAILEY. Now I make a point of order that the Senator from Ohio is not entitled to the floor to make that motion; that the senior Senator from Alabama has the floor.

The PRESIDENT pro tempore. The Chair overrules the point of order. The question is on agreeing to the motion of the Senator from Ohio.

Mr. BAILEY. I appeal from the decision of the Chair.

The PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Ohio.

Mr. BAILEY. I appeal from the decision of the Chair. I want that ruling to go on record.

Mr. FORAKER. Mr. President, I call the attention of the Senator from Texas to the fact that the Senator from Alabama had yielded the floor for me to make a motion that when the Senate adjourns it shall adjourn to meet at 9.50 a. m. to-morrow.

Mr. BAILEY. No; the Senator from Alabama yielded the floor so that the Senator from Ohio could make a motion to adjourn. I made the point of order that the floor could not be yielded against an objection. The Senator from Ohio said the Senator from Alabama had yielded to him the floor, and then I agreed that my point of order had been made too late. The Senator from Ohio acting upon that has made a wholly different motion and now proposes to make another motion, and I say that the Senator from Alabama has not yielded the floor to make motions from time to time, or different motions.

Mr. FORAKER. The Senator from Ohio does not make any such claim. The Senator from Ohio had a right to address the Chair, and if he received recognition of the Chair had a right to put the motion to adjourn.

Mr. BAILEY. I say the Senator has not—

Mr. FORAKER. I have no desire at all to prevent the Senator from making his remarks at this time, if he so desires.

Mr. BAILEY. I say the Senator from Ohio has not the right to be recognized by the Chair to make a motion to adjourn, or any other motion, if another Senator occupies the floor. Of course, the Chair may recognize a Senator who rises and addresses the Chair, because the Chair has a right to assume that the Senator is in order and intends to raise a question of order; but the recognition of the Chair by no means entitles the Senator recognized to the floor except in order.

Mr. FORAKER. I made no other claim than that; but my understanding was that the Senator from Alabama had yielded the floor, and when he yielded the floor—

Mr. MORGAN. I yielded to a motion to adjourn.

Mr. FORAKER. I understood that he was quite willing for a motion to adjourn. Then, it is true, I made a motion to adjourn, and upon the suggestion of the Chair or some one else I changed the motion to a time certain. I had to do that in order

to meet the necessities of the situation. Then when that motion was put I followed it with another, addressing the Chair and receiving recognition of the Chair, so that I think I was in order. But if the Senator wants to address the Senate now I will withhold the motion.

Mr. BAILEY. No; I do not desire to address the Senate at all until the Senator from Alabama concludes.

Mr. MORGAN. Mr. President, have I the floor now, no motion to adjourn being pending? I have not yielded.

The PRESIDENT pro tempore. The Senator from Alabama has the floor.

Mr. MORGAN. I move that the Senate adjourn to 9.50 a. m. to-morrow.

Mr. BAILEY. That motion has already been passed.

The PRESIDENT pro tempore. That motion has been carried. Does the Senator from Alabama move that the Senate adjourn?

Mr. MORGAN. I move that the Senate adjourn.

The PRESIDENT pro tempore. The question is on the motion of the Senator from Alabama.

The motion was agreed to; and (at 6 o'clock and 25 minutes p. m.) the Senate adjourned until to-morrow, Saturday, February 25, 1905, at 9 o'clock and 50 minutes a. m.

## HOUSE OF REPRESENTATIVES.

FRIDAY, February 24, 1905.

The House met at 11 o'clock a. m.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

The Journal of the proceedings of yesterday was read and approved.

### CONFERENCE REPORT ON ARMY APPROPRIATION BILL.

Mr. HULL. Mr. Speaker, I desire to submit conference report on the bill H. R. 17473, making appropriations for the support of the Army, to be printed under the rule.

The SPEAKER. The report and statement will be printed under the rule.

### PENSION BILLS.

Mr. SULLOWAY. Mr. Speaker, I ask unanimous consent that bills on the Private Calendar in order for consideration to-day may be considered in the House as in Committee of the Whole.

The SPEAKER. The gentleman from New Hampshire asks unanimous consent that bills on the Private Calendar in order for consideration to-day may be considered in the House as in Committee of the Whole under the five-minute rule. Is there objection?

There was no objection.

Mr. MADDOX. Mr. Speaker, I ask unanimous consent that the reports upon all these pension bills may be printed in the Record.

The SPEAKER. The gentleman from Georgia asks unanimous consent that all reports upon the pension bills be printed in the Record. Is there objection?

There was no objection.

MARTHA M. BOLTON.

The first pension business on the Calendar was the bill (S. 68) granting an increase of pension to Martha M. Bolton.

The bill was read as follows:

*Be it enacted, etc.,* That the Secretary of the Interior be, and he is hereby, authorized and directed to place on the pension roll, subject to the provisions and limitations of the pension laws, the name of Martha M. Bolton, widow of William W. Bolton, late of Company F, First Regiment Missouri Mounted Volunteers, war with Mexico, and pay her a pension at the rate of \$12 per month in lieu of that she is now receiving.

The report (by Mr. LOUDENSLAGER) is as follows:

The Committee on Pensions, to whom was referred the bill (S. 68) granting an increase of pension to Martha M. Bolton, have considered the same and respectfully report as follows:

Said bill is accompanied by Senate Report No. 3366, this session, and the same fully setting forth the facts, is adopted by your committee as their report, and the bill is returned with a favorable recommendation.

[Senate Report No. 3366, Fifty-eighth Congress, third session.]

Martha M. Bolton, whose post-office address is Sedalia, Mo., is the widow of William M. Bolton, who served in the Mexican war from June 16, 1846, to June 21, 1847, as sergeant in Company F, First Regiment Missouri Mounted Volunteers.

Mrs. Bolton is now receiving the pension of \$8 per month provided by the Mexican war service act of January 29, 1887. She was married to the soldier April 23, 1867, and lived with him until his death, July 2, 1873, and has never remarried.

Claimant is now 69 years of age. It is shown by evidence filed with your committee that she is an invalid and is afflicted with chronic hem-

orrhoids, chronic muscular rheumatism, and kidney disease, and is physically incapacitated for earning her support or of doing even general housework. It is further shown that she is in very dependent circumstances. The only property she possesses is a small three-room house, worth about \$250, and her income aside from her pension does not amount to \$25 per year.

There are many precedents for increasing pensions in cases of this character, in view of which your committee report the bill back favorably with a recommendation that it pass.

The bill was ordered to a third reading; and it was accordingly read the third time and passed.

WILLIAM G. BRADLEY.

The next pension business was the bill (S. 2456) granting a pension to William G. Bradley.

The bill was read as follows:

*Be it enacted, etc.,* That the Secretary of the Interior be, and he is hereby, authorized and directed to place on the pension roll, subject to the provisions and limitations of the pension laws, the name of William G. Bradley, late of Company K, First Regiment Colorado Volunteer Infantry, war with Spain.

The report (by Mr. LOUDENSLAGER) is as follows:

The Committee on Pensions, to whom was referred the bill (S. 2456) granting a pension to William G. Bradley, have considered the same and respectfully report as follows:

Said bill is accompanied by Senate Report No. 3364, this session, and the same fully setting forth the facts is adopted by your committee as their report, and the bill is returned with a favorable recommendation.

[Senate Report No. 3364, Fifty-eighth Congress, third session.]

William G. Bradley enlisted June 18, 1898, for service in the war with Spain, as a private in Company K, First Regiment Colorado Volunteer Infantry, and served one year, the greater part of the time in the Philippine Islands, being discharged for physical disability at Manila, June 21, 1899.

He filed a claim at the Bureau under the general law August 16, 1899, alleging that he incurred heat exhaustion at Manila, about December, 1898, followed by epileptic seizures, but his claim was rejected July 25, 1902, on the ground that soldier's epilepsy was shown by the records of the War Department to have existed prior to enlistment.

The adverse record upon which the soldier's claim was rejected is contained in the hospital report of treatment for his disability. In November, 1898, he was admitted to hospital for treatment for epilepsy, and the records state that the disability originated prior to enlistment, and was not incurred in line of duty. This record is continued in December, 1898, and again in January and February, 1899, but in June, 1899, the records of the First Reserve hospital at Manila report his disability as originating in line of duty.

The soldier was discharged upon surgeon's certificate of disability, signed by his company commander, Capt. W. A. Cornell, and regimental surgeon, Maj. Lewis H. Kemble. Captain Cornell stated that soldier was recommended for discharge on account of physical disability due to epileptic seizures; that the disease first appeared "September 10, 1898; while in barracks was overcome by a fit; they occur at intervals of about two months," and that it was incurred in line of duty; and also stated that "soldier asserts he was never affected in that manner before arriving in the Tropics."

Surgeon Kemble stated soldier was incapable of performing military duty because of "repeated attacks of epilepsy (grand mal), rendering him unfit for duty because of his unreliability, the fits being liable to come on at any time while on duty or otherwise." He also stated as follows: "Soldier denies having had any attacks prior to enlistment; previous history unknown. Incurred in line of duty. Does not use intoxicants."

It also appears that soldier made affidavit May 27, 1899, a little less than a month prior to his discharge, which affidavit is a part of the official War Department record, that he was never subject to epileptic seizures before his enlistment.

Because of the contradictory records as to the origin of his disability, soldier's claim was ordered for special examination to secure evidence as to his condition prior to his enlistment. He declared to the special examiner that he was never sick a day before he entered the military service, and was one of the huskiest lads in his section, and was entirely free from all diseases or disabilities prior to his enlistment; that he never had an epileptic seizure before he entered the Army, and that he was one of the healthiest fellows in his neighborhood before his service. As to the origin of his disabilities, he asserts that he had his first epileptic seizure at Manila, in quarters, just after he came in from guard duty policing the town, and that he thinks his first seizure was due to being sunstruck walking his post.

Evidence of several witnesses—neighbors, employers, and fellow-workmen—was secured by the special examiner relative to claimant's health before enlistment. These witnesses positively testify that soldier was healthy and sound before enlistment; that he never had epilepsy or epileptic seizures before service, and that he performed hard and difficult work at mining and stage driving and work which would only be given to a healthy and capable man, and that it is only since his discharge that they have noticed his poor health and disabled condition. This evidence is fully corroborative of the claimant's declarations as to his good health before service, and the special examiner of the Bureau expresses the opinion that the evidence as to prior soundness is sufficient. Not one witness testified to any ante-service disability, and there is no evidence of prior unsoundness in the case apart from the hospital record.

It also appears that there is some difference in opinion in the Pension Bureau regarding the merits of the claim, one reviewer holding that the evidence showed soldier was sound at enlistment; that he broke down in the line of duty through some epileptiform malady, and has been wrecked by it ever since and should have his pension.

The Senate has more than once passed a bill doing away with the doctrine of prior unsoundness.

This man was examined by a medical officer at enlistment. He served faithfully for several months and was discharged on surgeon's certificate of disability, setting forth that he incurred his disability in line of duty. In addition to this, the evidence of his neighbors, employers, and fellow-workmen is that he was sound and free from disability at enlistment. The weight of testimony is against the contention of prior unsoundness.